

Elusive Justice

False Advocacy

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

Exhibit C

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Gregory's Case

The Tip of an Unconstitutional Iceberg of Disability
Discrimination and First Amendment Violations



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Full Report Online: www.disabilityandabuse.org/gregorys-case

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Preface:

Disability Discrimination Results in Injustice

This is an appeal to people who care about civil rights – especially First Amendment rights, such as freedom of speech, association, and religion. It is also an appeal to those who care about the rights of people with intellectual or developmental disabilities.

The Lanterman Act was passed by the California Legislature decades ago. It declares that people with developmental disabilities are entitled to the same constitutional and statutory rights as everyone else.

The Legislature also created a Limited Conservatorship System three decades ago. It incorporated into the Probate Code the rights guaranteed by the Lanterman Act. Therefore, those rights apply to the Limited Conservatorship System and govern the practices of the judges and attorneys who operate it.

In Los Angeles County, the court-appointed attorneys on a Probate Volunteer Panel (PVP) are given dual roles: represent the limited conservatee but also help the court resolve the case. This dual role creates an inherent conflict of interest. The attorney cannot be the “eyes and ears of the court” on the one hand, and also be a diligent and conscientious advocate protecting the rights of the client on the other.

PVP attorneys receive mandatory training on how to represent clients in these cases. The training program is conducted by the County Bar Association, with direction and approval by the Probate Court. So the judges who hear the limited conservatorship cases are in charge of the training program.

The attorneys are not trained on how to be diligent and conscientious advocates for clients with developmental disabilities. They are not educated on how to conduct a contested hearing to oppose a limited conservatorship or to insist that the client retain voting rights or social rights or other rights. They are not trained on the various developmental disabilities that exist or how to properly interview someone with one or more cognitive or communication disabilities.

Nothing is said in the trainings about the constitutional rights of their clients or how to defend those rights. Federal voting rights are not mentioned.

Neither the attorneys nor the judges receive training on the Americans with Disabilities Act or their duties under the ADA or similar protections under Section 504 of the federal Rehabilitation Act.

Court investigators, when they are even involved – which was *never* during the past few years – are not familiar with the ADA and are not trained about developmental disabilities or how to properly investigate cases where clients have serious cognitive disabilities. Federal voting rights laws are not included in their trainings, even though they make recommendations to the court about whether a conservatee should retain his or her voting rights.

Regional Centers are involved in the process pursuant to state law. There are 21 Regional Centers in California and each one is a separate corporation. They are required to assess the capacity of their clients in seven areas of functioning, including their ability to make decisions regarding finances, medical procedures, residence, education, marriage, and social and sexual activities.

Unfortunately, the Regional Centers are not receiving guidance from or regulation by the state Department of Developmental Services in this regard. DDS has no regulations on conservatorship evaluations by Regional Centers and does no monitoring or training on these issues. Each Regional Center is on its own.

Gregory’s case was one of three cases that brought the Limited Conservatorship System to the attention of the Disability and Abuse Project. We broadened our investigation beyond those three cases and examined the system as a whole – especially how it operates in Los Angeles County.

We believe that conservatees such as Gregory are victims of disability discrimination at the hands of state court judges and court-appointed attorneys. Thousands of people are losing their rights, often unnecessarily, due to disability discrimination – whether it is intentional or due to indifference.

The courts and the attorneys are not providing accommodations necessary to insure equal access to justice for people with developmental disabilities. Training is grossly inadequate. Furthermore, the attorneys have dual roles, resulting in a conflict of interest.

Because of disability discrimination and the failure of the system to provide reasonable modification of policies and practices, thousands of conservatees, Gregory included, are being denied their rights. We need your help so that we, together, can change the system and restore the rights of people like Gregory.



Gregory's Case: The Tip of an Unconstitutional Iceberg of Disability Discrimination and First Amendment Violations

The Los Angeles Superior Court is an Assembly Line of Injustice for People with Developmental Disabilities

by Thomas F. Coleman

Gregory's fate of social servitude was sealed on April 28, 2014, when Los Angeles Superior Court Judge Daniel Murphy ruled from the bench that Gregory would no longer have the right to make his own social decisions. From that day forward, his paid conservators were given "sole authority" to decide Gregory's social interactions.

What had Gregory done to deserve the loss of his First Amendment right of association and free speech? What harm had been caused to him by any of his previous social decisions? The answers to these questions are "nothing" and "none."

Apparently the judge decided to strip Gregory of his social rights as a way to stop ongoing disputes, and save court time regarding the disputes, caused because Gregory's father would not accept his son's stated desire not to visit with his father every third weekend – as Gregory was required to do by a prior court order – and the son's objections to attending church with the father.

Gregory, now 28 years old, has autism. He is a high functioning person who shares an apartment with a roommate and their caregiver. Gregory works part time, does volunteer work at various places and has hobbies. He loves everything about airplanes. He can communicate well by speaking and by writing.

Gregory was placed under a conservatorship order (adult guardianship) after he became an adult. His parents are divorced. After his mother resigned as conservator in response to orders that she felt forced her to violate her son's rights and alienate him, a professional conservator was appointed to make decisions regarding residence, education, finances,

and medical care.

Despite being under a conservatorship order, Gregory had retained the right to make his own social decisions under the original conservatorship order. However, when he started objecting to having to visit with his father, the power of the court was used to force Gregory to do so.

Court orders issued in 2009 and 2011, at the request of the father, required Gregory to spend every Sunday, and then every third weekend, with his father. Gregory found his own way to circumvent the court order.

He would leave the apartment before the father would come to pick him up. If Gregory was at home, he would sometimes lock the door and not answer it when his father knocked.

In 2012, after being accused of violating orders, the caregiving agency sought clarification from the Court, which made a new order directing staff to pressure Gregory to stay until his

father picked him up.

Gregory's ongoing protests at having to attend church with his father were ignored by his court-appointed attorney and the court. So forced church attendance was part of the routine, since the court specifically gave the father authority to decide what activities would occur during Gregory's court-mandated visits.

Gregory's mother tried to support Gregory's objections to the decision of the court (at the father's request) to replace his first professional conservator and to remove his longstanding, primary caregiver. Gregory asked repeatedly to keep them, but his wishes were not honored by the court. They were removed.

"I need my rights protected...I have my right to say no to Dad...I need [my attorney] to protect me.

Greg D.

Dept 29, Superior Court

Years later, when ordered to force him into visitation and psychotherapy against his will, his mother resigned, and a professional was appointed.

After the 2012 order, the mother filed an appeal raising the issue that Gregory's constitutional rights were being violated. Gregory's own court-appointed attorney did not participate in the appeal since he had acquiesced in the 2011 order for forced visitation and the 2012 order requiring the caregivers to pressure Gregory to be available to the father to take him from his home. Obviously, Gregory's attorney would not appeal to complain about his own failure to object, and to defend the constitutional rights of his client.

The Court of Appeal dismissed the mother's appeal, on the ground that she lacked "standing" to appeal. Only the person whose rights are violated can appeal, the court said, and it was Gregory's, not the mother's rights that were allegedly violated. Since his mother was not allowed to advocate for Gregory's rights, and since his court-appointed attorney had surrendered those rights, Gregory had no advocate.

When the case was returned from the Court of Appeal to the Superior Court, the paid co-conservators noticed an inconsistency in the legal paperwork. Gregory still retained the right to make social decisions, in theory, because when the conservatorship was originally granted the court had not included social rights in the conservators' powers.

To plug this "loophole," the co-conservators filed a petition to have the court transfer authority to make social decisions from Gregory to them. At this point, Gregory was without an attorney because the court had relieved the attorney as counsel after it had entered the order in 2012.

A new attorney was appointed by the court to represent Gregory in the proceeding regarding social rights. The Disability and Abuse Project sent numerous emails to the attorney to remind her that Gregory had a right to "effective assistance of counsel" which included the right to vigorous advocacy to protect his rights. The emails also contained information about

Gregory's objections to visiting his father and letters of support from people who knew Gregory and who attested to his social decision-making skills. The attorney was also sent emails about legal principles regarding freedoms of speech and association.

None of these communications had any effect on the attorney. It appeared that she was more focused on her secondary duty to help the court resolve the case than her primary duty to advocate for the stated wishes of her client and to defend his rights.

A local court rule places court-appointed attorneys representing proposed conservatees in a conflict of interest. What should be their sole duty – confidentiality and loyalty to the client – is compromised by their obligation to help the court resolve the case. (Rule 10.85) An attorney cannot be an advocate for the client and also be a mediator to help the judge settle cases.

Gregory's new attorney did not oppose the petition of the co-conservators for sole authority to make social decisions. However, after ongoing communications from the Disability and Abuse Project, she offered a compromise. She suggested that Gregory and the conservators "share" social decisionmaking. However, the "fine print" of her proposal stated that, if Gregory and the conservators disagreed, the conservators would prevail. The "compromise" was really a surrender of Gregory's rights.

Gregory's mother provided a declaration asking the court to honor Gregory's objections to mandatory visitation by letting him choose how to spend it and when to end it. She noted that his attorneys, psychiatrist, Regional Center, conservators and the court itself had all witnessed and documented his fears of visitation.

The Disability and Abuse Project sent two memos to the judge. One focused on legal and constitutional precedents that protect the rights of an adult from forced social interactions. That memo also attached letters from several people who knew Gregory for years – all of which attested to his ability to make his own social decisions. These memos had been sent to

"I don't like going to church, and I like having a free day every Sunday."

Greg D.
IPP Meeting
Feb. 7, 2012

financial and emotional limit. The court had ordered her to pay unlimited fees to the conservators (and their attorney) in the case, and indefinitely, regardless of the outcome. She could not afford to request a contested hearing on her son's social rights. She could no longer afford her own attorney, so she was representing herself. Also, demanding such a hearing would have been futile anyway, since Gregory's attorney would not defend his rights. So she pointed out Gregory's stated wishes, with documentation, and hoped the judge would protect her son's rights.

The judge did not accept the suggestion of Gregory's attorney for shared decision making (which the conservators eventually had agreed to). The judge apparently wanted to end the proceedings. One way to do that was to end Gregory's right to make his own social decisions.

On April 28, 2014, Judge Murphy declared, in effect, that Gregory was socially incompetent. Paid conservators – people who were virtually strangers to him – would now have sole power to decide who Gregory would socially interact with and what social activities he would engage in. The order also reaffirmed the court's 2011 and 2012 orders that required Gregory to spend every third weekend with his father (with the father deciding activities) and for the caregiver to pressure Gregory to be home when his father would arrive to pick him up.

Soon after the 2014 order of "social servitude" was entered, Gregory expressed his objection to the order. On May 29, 2014, Gregory wrote (in his own handwriting and signed by him): "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."

After this note was delivered to the Disability and Abuse Project, we contacted the Disability Rights Project of a national civil rights organization. We explained the facts of the case and the procedural history. We also explained that an advocate had reached out to virtually every disability rights organization in California and many national organizations – some 33 in all – to no avail. No organization would take up Gregory's cause.

The organization reviewed the materials. They said they would like to do something, but could not find a cooperating attorney to represent Gregory. So the number of disability rights groups who did not help Gregory went from 33 to 34.

The Disability and Abuse Project is a small nonprofit that does research, education, and public policy advocacy. We are not equipped to represent individual clients. We function as volunteers.

The most we can do is to call attention to Gregory's case and show that it is the tip of an unconstitutional iceberg in Los Angeles County, and probably in California and nationally.

We have studied how limited conservatorships are processed by the Los Angeles Superior Court, writing reports and essays – in addition to convening conferences – about how the system is dysfunctional and how the various participants (judges, attorneys, investigators, etc.) are routinely violating the statutory and constitutional rights of people with developmental disabilities.

We have brought these problems, with factual documentation and legal arguments, to the attention of the local judges as well as the Chief Justice of California and the Judicial Council of California. So far, the response to our complaints has mostly been silence, with a slight ray of hope from the Judicial Council.

The next steps may involve complaints with agencies of the Executive Branch: the Department of Developmental Services at the state level, and the Department of Justice at the federal level.

We want these agencies to understand that Gregory's case is not an exception in terms of disability discrimination and violations of the First Amendment rights of adults with developmental disabilities.

There are currently more than 40,000 clients of Regional Centers in California who are under an order of conservatorship. An additional 5,000 or so are added to this category each year.

The Los Angeles Superior Court processes about

"Freedom of association ... plainly presupposes a freedom not to associate."
Roberts v. Jaycees
U.S. Supreme Court
468 U.S. 609 (1984)

1,200 new limited conservatorship cases per year. In a review of the records in several dozen cases, it was determined that the vast majority of limited conservatees are stripped of their First Amendment right to make their own social decisions. About 90 percent are also denied the right to vote.

Other than the Disability and Abuse Project, no organization is advocating for the constitutional and statutory rights of limited conservatees as a class. Disability rights organizations, including some that annually receive millions of dollars in federal and state funds for advocacy services, have not taken up this cause and have not devoted time and energy to address these problems.

The many problems with the Limited Conservatorship System were brought to the attention of the California Attorney General, the Department of Developmental services (DDS), and the State Bar of California, but to no avail. Their response to our communications has been silence.

The Lanterman Act declares that people with developmental disabilities have the same rights as all people have. DDS regulations affirm the right of people with developmental disabilities to not attend church if they so choose.

Decisions of the United States Supreme Court recognize that freedom of association includes the right not to associate. Freedom of speech includes the right not to be forced to listen to others. Forced visits make a conservatee a captive audience.

A published decision of the California Court of Appeal states that an adult with a developmental disability has the right to not visit with a parent.

The Probate Code specifies that the right to make decisions, including social decisions, shall not be taken away from a conservatee without a showing, by clear and convincing evidence, that it is necessary to protect the conservatee from harm. Lesser restrictive alternatives must be considered and it must be shown, with evidence, that they won't work.

Case law is clear that a conservatee is entitled to have effective assistance of counsel. Once the right to

counsel is conferred by statute, due process requires that the attorney provide effective advocacy. Attorneys have ethical duties of confidentiality and loyalty to clients. Having "dual roles" is a conflict of interest.

Despite these standards governing the performance of attorneys, the system in Los Angeles gives court-appointed counsel for limited conservatees a dual role. They are expected to help the court resolve the case at the same time they perform their statutory duty of representing the "interests" of the client. Those interests include freedom of speech, freedom of association, and religious freedom.

Thousands of limited conservatees need class-based advocacy to protect their rights. Unfortunately, organizations with a disability rights mission have not put the dysfunction of the Limited Conservatorship System on their agendas.

The Disability and Abuse Project invites disability services agencies, and welcomes disability rights organizations and their leaders, to join us in this monumental civil rights movement.

There are two ways to proceed: correcting injustices in individual cases such as Gregory's case, and seeking systemic changes in policies and practices to correct problems in these judicial proceedings. We could use organizational collaborators on both approaches. ◇◇◇

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"Each person with a developmental disability has a right to religious freedom . . . including the right to attend services or to refuse attendance"
DDS Reg. 50510(a)(4)



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Quotable Quotes

Despite this evidence, Gregory's court-appointed attorney did not try to protect his First Amendment rights.

Gregory:

At the hearing on October 4, 2013, Gregory told the judge in open court: "I don't want my rights violated. . . I have the right to say no to Dad . . . No I don't want to see you Dad . . . and I need Ms. Maillian to protect me." [Maillian is his court-appointed attorney].

At the hearing on April 28, 2014, Gregory told the judge in open court: "I have the right to speak up for myself and say no to my Dad. . . . I don't want to spend time with my Dad because he is scary. . . I want to be away from him because he frightens me a lot. . . I don't like going to church. . . I want to be away from Dad."

Mother of Gregory:

"I wholeheartedly support Mr. [Gregory] Demer having a good relationship with his father. I believe the right way – and only effective way – to achieve this is to empower Mr. Demer with control over: how visitation occurs, whether he can bring support staff, and when he can go back to his apartment. The conservators have seen, first-hand, how effective empowerment is in Mr. Demer's ability to overcome fear and resistance. In visitation with me, I have always empowered Mr. Demer to decide whether or not to visit."

Court-Appointed Psychologist:

"Certainly, Gregory should never be forced to participate in optional activities he chooses to avoid. . . . [I]t is not in his best interest to be forced to visit with his father at this time or in the immediate future."

Another Court-Appointed Psychologist:

"[T]he decision for the visit should be left entirely up to Greg's choosing."

Regional Center Report:

"During the IPP, Greg stated without prompting that things he dislikes are going to church and going with his dad on Sundays."

Previous Court-Appointed Attorney:

"Gregory Demer does not wish to see his father at this time. He should not be forced to do so." This attorney also stated: "If I am to advocate for what my client tells me, then he should only see his parents when he is agreeable."

Regional Center Declaration:

"In accordance with Probate Code section 1827.5, [Westside Regional Center] strongly recommends against granting the Limited Conservators power over Gregory Demer's social and sexual contacts and relationships. . . . Mr. Demer should be permitted to make his own choices about whom he spends time with and what he does with his time. Based upon his voluminous records at [the Regional Center], he has never demonstrated behavioral issues which would justify termination of his right to make his own choices."

Probate Investigator Report:

Referring to Gregory, the court investigator stated: "[He] asked not to go to church every Sunday," adding "Several times during the interview, Gregory said, 'I want to be free from it [church].'"

Former Conservator:

Each week when I would visit Greg to make his next week's schedule, he would emphatically state, "I don't want to see my Dad. I don't want to go to church with Dad and Melissa."

Social Rights Protection: A Case Study

The Disability and Abuse Project is initiating a case study to be used in an educational program focusing on the social rights of people with developmental or intellectual disabilities.

The case study involves an audit of *In re Gregory D.*

This limited conservatorship proceeding was brought to our attention by a published opinion of the California Court of Appeal which concluded that a parent does not have the right to appeal from an order the parent believes infringes on the constitutional rights of an adult child with a developmental disability.

The substantive issue raised in the appeal concerned orders by the probate court that allegedly violated the fundamental constitutional rights of Gregory D, an adult with a developmental disability.

At issue was Gregory's right to make his own social decisions. The probate court issued an order declaring that the father had a right to ongoing visits with Gregory. The order did not acknowledge Gregory's right to decline such visits or to terminate them at will. The order also directed Gregory's paid caregivers to pressure him to be available for visits by the father. The source of the father's so-called right to visit an adult child was not identified by the order. The mother appealed because she believed the order unduly infringed on Gregory's freedom of association.

The Court of Appeal did not address this issue because the appeal was dismissed on procedural grounds.

The Disability and Abuse Project has decided to analyze this issue in greater detail, since similar cases have been brought to our attention over the past year. The restriction of social rights of people with disabilities is a recurring problem.

We believe that conservators should not be given the power to control social decisions of an adult with developmental disabilities, except in the most limited situations, and even then only to prevent clear harm from occurring to a limited conservatee. A conservatee should never be required, or pressured, to visit with someone that he or she does not want to visit.

We also believe that attorneys appointed to represent adults with developmental disabilities should vigorously defend the client's social decision-making rights and should not stipulate to court orders that have the potential for infringing on such rights.

Furthermore, we believe that judges presiding in limited conservatorship proceedings should protect a conservatee's right to make social decisions; if an order is issued that has the potential to restrict such rights, the judge should advise the conservatee, on the record, of his or her right to decline visitation with anyone on any occasion. The conservatee should also be advised, on the record, that if a visit is initiated with his or her consent, the conservatee has the right to end the visit at any time and to be returned to his or her residence as soon as reasonably possible.

We have chosen the *Gregory D.* case as a model for education and training of judges, attorneys, and conservators.

We will be auditing this case -- current, past, and future records and proceedings -- to evaluate the process as well as the performance of everyone involved in the proceedings. We believe that lessons can be learned from this specific case which can inform others who may participate in other limited conservatorship cases in the future.

Our social rights protection program will reach out to probate court judges in California as well as administrators operating training programs for court-appointed attorneys. We will also share our findings and recommendations with the California Association of Public Administrators, Public Guardians, and Public Conservators. Our educational materials also will be given to the Professional Fiduciary Association of California.

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July 1, 2013

Social Rights Advocacy for Adults with Autism

Forced Socialization of Conservatees is Never Acceptable

by Thomas F. Coleman

Adults with autism or other developmental disabilities often become the subject of a limited conservatorship proceeding. These adults may need legal protections and oversight to assist them in navigating through a complex and complicated world.

A parent may initiate a petition for limited conservatorship, asking the court to appoint them, or someone else, to make certain decisions on behalf of their adult child who has a developmental disability. The other parent, if there is one, has the right to participate in the court proceeding. The adult child has the right to have an attorney to represent his or her interests, independently of the parents.

Sometimes in the course of these proceedings, the issue of visitation becomes a point of contention. Who the conservatee or proposed conservatee will visit, how often, and under what conditions, are issues that may be hotly contested.

California law presumes that limited conservatees have the right to make decisions about whom to visit and under what conditions. It is only in extreme circumstances that a court will strip the conservatee of social decision-making rights and give authority to a conservator to make such decisions.

Parents of an adult with autism or other developmental disabilities may have their own agenda when it comes to visitation issues. That agenda may or may not be in the best interest of their adult child. That is why it is so important for conservatees to have their own independent attorney.

California law allows a judge to appoint an attorney to represent the interests of a conservatee. If the conservatee requests an attorney, the court *must* appoint such an attorney. When a request is made, the appointment of an attorney for the conservatee is no longer optional; it is mandatory.

Once an attorney is appointed, California law makes it clear that the conservatee has the right to *effective*

assistance of counsel. This requires the attorney to perform reasonably competent services as a diligent and conscientious advocate.

If the attorney for the conservatee does not perform in such a manner, the conservatee is entitled to complain to the court and ask for another attorney. Once such a complaint is made, the court must conduct a hearing, outside of the presence of the other parties, to allow the conservatee to privately explain what his attorney's failings have been. (*People v. Hill*, California Court of Appeal, Fourth District, Div. Two, Case E054823, filed 9-11-13.)

The conservatee may also file a complaint with the state bar association or sue the attorney for malpractice. However, the meaningful exercise of the right to complain may require assistance by a friend-of-the-court or a court-appointed-special-advocate (CASA) since a conservatee has, by definition, limited abilities to be a self-advocate. (As it now stands, the CASA system is only used in dependency court for minors and not in probate courts.)

The First Amendment to the United States Constitution protects the freedom of speech of all persons, people with developmental disabilities included. The due process clause of the Fourteenth Amendment protects the freedom of association. Comparable clauses in the California Constitution protect these rights as well.

The right of an adult with a developmental disability to make social decisions falls under the protection of these constitutional provisions. Courts may not restrict such rights without affording a conservatee procedural due process of law, which means there must be a hearing to determine whether the facts warrant such a restriction.

Even then, a court may only restrict such rights if there is a compelling need to do so, and even then, may only use the least restrictive means necessary to accomplish the compelling objectives.

These procedural and substantive constitutional rights are meaningless if the attorney appointed to represent the conservatee stipulates away those rights or does not demand a hearing. Constitutional rights are worthless if they are thrown away or abandoned by a conservatee's attorney.

In order to provide *effective* assistance, competent counsel representing a conservatee must investigate the facts, interview his or her client, and allow the client to participate in strategic decisions.

Investigating the facts would include obtaining and reviewing all documents pertaining to the client's level of competency, such as educational records. Interviewing the client's therapist and the Regional Center case worker would be necessary. To understand the client's abilities, the attorney should visit the residence, place of work, school, and interview people who regularly interact with the client.

If the client has a communication disability, the attorney should investigate how the client communicates with others at school or home. The attorney should avail himself or herself of any adaptive technology that is available to assist the attorney and client to communicate with each other.

Failure to use available adaptive communication technology would be a violation of the client's rights under the Americans with Disabilities Act and could subject the attorney to discipline or liability. It could also be the basis for a complaint to the judge who appointed the attorney, or for an appeal.

An attorney for a conservatee should never tell the court that his or her client lacks capacity to make decisions or lacks the ability to communicate if, in fact, this is not the case. If such a representation is inadvertently made to the court, it should be corrected as soon as possible.

A diligent and conscientious advocate would always oppose any order or proposed settlement that fails to respect the client's right to say yes or no to any specific visitation scheduled for any given date.

If a visitation schedule is presented for the sake of orderliness, the attorney for the conservatee should create a record, preferably in open court, that the

client has been informed of the right to reject all visitation or to say yes or no to some visits. When a visitation date arrives, the client should know that there is a right to reject such visitation, even at the last minute. If a visit is in progress, the client should know there is a right to terminate the visit and to ask to be returned home in a reasonably timely manner.

It is only if a conservatee is informed of these rights, on the record, that the conservatee's constitutional rights to freedom of speech and freedom of association are truly being protected.

Forced social contacts should be no more permissible than would be forced sexual encounters. Any adult, conservatee or not, has the right to veto a sexual relationship or to terminate one that started off as voluntary. No one, not even a judge, has the right to force or indirectly pressure a conservatee to have a sexual encounter against his or her will. Forced social contacts should be off limits as well.

Any stipulation or agreement that attempts to override a conservatee's *ongoing* authority to reject or terminate any specific visit or social interaction should be deemed void in violation of public policy.

Conservatees are entitled to have an attorney acting as a diligent and conscientious advocate, which requires an investigation of the facts, communications with the client, using appropriate adaptive communication technology, and vigorous protection of the client's social decision-making rights.

The weakest link in the constitutional chain that safeguards due process and freedom of association for adults with autism or other developmental disabilities is the right to competent counsel. This link needs to be monitored and strengthened.

Thomas F. Coleman is Legal Director of the Disability and Abuse Project of Spectrum Institute. This essay is part of a series of commentaries being written for its Social Rights Protection Program.

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April 17, 2014

Legal Principles Governing Attempts to Restrict the Social Rights of Conservatees

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

1. State Action

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

2. Fourteenth Amendment

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

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

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

3. First Amendment

The First Amendment protects freedom of speech and association. Freedom of association includes the freedom not to associate. Freedom of speech includes the freedom from "forced listening."

A court order requiring visitation or a conservator's directive pressuring a conservatee to visit someone he or she does not want to visit is a form of state action violating the conservatees freedom not to associate and freedom from forced listening. Making a conservatee become a "captive audience" is unconstitutional.

4. Statutory Presumptions

California law presumes that a limited conservatee will retain his or her social rights unless they are affirmatively removed by a court order.

California law directs that the limited conservatorship system should encourage limited conservatees to be as independent as possible.

5. Burden of Proof

These constitutional principles and statutory presumptions require that the person seeking to restrict the social rights of a conservatee should have the burden of proof. Those seeking to protect these rights should be able to rely on these presumptions and the court should require the party seeking restrictions to proceed as the moving party.

The court should require evidentiary proof that such restrictions are: (1) factually necessary, (2) serve a compelling state interest, as opposed to a private interest or desire of a party; (3) are necessary to further the state interest; (4) are the least restrictive alternative. Due to the fundamental nature of the constitutional rights being restricted, the court should require clear and convincing evidence.

6. Other Requirements

Even if the court grants authority to a conservator to make social decisions for the conservatee, that authority should never involve the conservatee being required or pressured to visit with someone against his or her will.

Court orders or directives of conservators should only involve restrictions on visitations that are harmful to a conservatee, but never mandatory visitation. No one would argue that a court or a conservator could order conservatees to have sexual relations with someone against their will. The same should hold true of social relations.

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Lanterman Developmental Disabilities Services Act

California Welfare and Institutions Code

Statement of Rights

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

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

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

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

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

Spectrum Institute
Disability and Abuse Project
www.disabilityandabuse.org

**California Code of Regulations
Title 17, Division 2
Chapter 1 - General Provisions
SubChapter 5 - Clients' Rights
Article 2 - Rights of Persons with Developmental Disabilities**

§50510. Application of This Subchapter.

Each person with a developmental disability, as defined by this subchapter, is entitled to the same rights, protections, and responsibilities as all other persons under the laws and Constitution of the State of California, and under the laws and the Constitution of the United States. Unless otherwise restricted by law, these rights may be exercised at will by any person with a developmental disability. These rights include, but are not limited to, the following:

(a) Access Rights.

(1) A right to treatment and habilitation services. Treatment and habilitation services shall foster the developmental potential of the person. Such services shall protect the personal liberty of the individual and shall be provided under conditions which are the least restrictive necessary to achieve the purposes of treatment.

(2) A right to dignity, privacy, and humane care.

(3) A right to participate in an appropriate program of publicly-supported education, regardless of the degree of handicap.

(4) A right to religious freedom and practice, including the right to attend services or to refuse attendance, to participate in worship or not to participate in worship.

(5) A right to prompt and appropriate medical care and treatment.

(6) A right to social interaction and participation in community activities.

(7) A right to physical exercise and recreational opportunities.

(8) A right to be free from harm, including unnecessary physical restraint, or isolation, excessive medication, abuse or neglect. Medication shall not be used as punishment, for convenience of staff, as a substitute for program, or in quantities that interfere with the treatment program.

(9) A right to be free from hazardous procedures.

(10) A right to advocacy services, as provided by law, to protect and assert the civil, legal, and service rights to which any person with a developmental disability is entitled.

(11) A right to be free from discrimination by exclusion from participation in, or denial of the benefits of, any program or activity which receives public funds solely by reason of being a person with a developmental disability.

(12) A right of access to the courts for purposes including, but not limited to the following:

(A) To protect or assert any right to which any person with a developmental disability is entitled;

(B) To question a treatment decision affecting such rights, once the administrative remedies provided by law, if any, have been exhausted;

(C) To inquire into the terms and conditions of placement in any community care or health facility, or state hospital, by way of a writ of habeas corpus, and

(D) To contest a guardianship or conservatorship, its terms, and/or the individual or entity appointed as guardian or conservator.

(b) Personal Rights. Each person with a developmental disability who has been admitted or committed to a state hospital, community care facility, or health facility shall have rights which include, but are not limited to, the following:

(1) To keep and be allowed to spend one's own money for personal and incidental needs.

(2) To keep and wear one's own clothing.

(3) To keep and use one's own personal possessions, including toilet articles.

(4) To have access to individual storage space for one's private use.

(5) To see visitors each day.

(6) To have reasonable access to telephones, both to make and receive confidential calls, and to have calls made for one upon request.

(7) To mail and receive unopened correspondence and to have ready access to letter-writing materials, including sufficient postage in the form of United States postal stamps.

(8) To refuse electroconvulsive therapy ("ECT").

(9) To refuse behavior modification techniques which cause pain or trauma.

(10) To refuse psychosurgery. Psychosurgery means those operations currently referred to as lobotomy, psychiatric surgery, and behavioral surgery and all other forms of brain surgery if the surgery is performed for any of the following purposes:

(A) Modification or control of thoughts, feelings, actions, or behavior rather than treatment of a known and diagnosed physical disease of the brain.

(B) Modification of normal brain function or normal brain tissue in order to control thoughts, feelings, actions, or behavior.

(C) Treatment of abnormal brain function or abnormal brain tissue in order to modify thoughts, feelings, actions, or behavior when the abnormality is not an established cause for those thought, feelings, actions, or behavior.

(11) Other rights as specified by administrative regulations of any federal, state, or local agency.

(c) Rights of State Hospital Residents. In addition to all of the other rights provided for in this subchapter, each person with a developmental disability who resides in a state hospital shall be accorded the following rights:

(1) If involuntarily detained, to have access to a current and up-to-date copy of the California Welfare and Institutions Code. This right includes the right to have assistance from the Clients' Rights Advocate in the reading and understanding of the Code.

(2) To give or withhold consent for treatments and procedures, in the absence of a judicial order or other provision of law which provides for the exercise of this right to devolve to another party.

(3) To be provided with the amount of funds specified in Welfare and Institutions Code Section 4473 for personal and incidental use if, following the initial thirty (30) days of state hospital residency, the person is not receiving an amount of income for such use which is equal to or greater than the amount authorized by Section 4473.

Note

Authority cited: Section 11152, Government Code. Reference: Sections 4423, 4473, 4503 and 4504, Welfare and Institutions Code.

Conservatorship of Gregory D. (2013)214 Cal.App.4th 62

[No. B237896. Second Dist., Div. Three. Mar. 5, 2013.]

Conservatorship of the Person of GREGORY D. GREGORY D. et al., Petitioners and Respondents, v. LINDA D., Objector and Appellant.

(Superior Court of Los Angeles County, No. SP006273, John L. Segal, Judge.)

(Opinion by Klein, P.J., with Kitching, J., and Aldrich, J., concurring.)

COUNSEL

Daniel D. Rodarte for Objector and Appellant.

Joseph D., in pro. per, for Petitioner and Respondent Joseph D.

Law Offices of Cynthia R. Pollock, Cynthia R. Pollock and Douglas S. Fabian for Petitioners and Respondents Bruce Hitchman and Lee Ann Hitchman.

No appearance for Petitioner and Respondent Gregory D. [214 Cal.App.4th 64]

OPINION

KLEIN, P.J.-

Linda D. (Linda), the mother of limited conservatee Gregory D. (Gregory) purports to appeal an order on petition for instructions re administration of Gregory's limited conservatorship.

Because Linda lacks standing to prosecute this appeal, relating to various alleged violations of Gregory's rights, the appeal is dismissed.

FACTUAL AND PROCEDURAL BACKGROUND

Gregory is a developmentally disabled adult, currently in his mid-twenties. He was diagnosed with autism as a child. His parents, Joseph D. (Joseph) and Linda, obtained a divorce, and Gregory resided with each of his parents, at their respective homes, on alternating weeks. In 2005, Gregory reached the age of majority. In 2008, he moved into

his own apartment, with supportive services which enable him to live independently.

In 2004, Linda and Joseph filed competing petitions to be named as the limited conservator of their son Gregory. In 2005, they entered into a settlement agreement setting the terms for Gregory's limited conservatorship. Pursuant to said settlement agreement, Joseph withdrew his petition for conservatorship and stipulated to Linda's appointment as Gregory's conservator.

On July 25, 2005, the trial court appointed Linda as Gregory's limited conservator. The appointment order placed the following limitations on Gregory: "1. The limited conservatee lacks the capacity to control his own residence or place of dwelling. [¶] 2. The limited conservatee lacks the capacity to access his confidential records and papers." Linda was granted [214 Cal.App.4th 65] various powers, including the power to fix Gregory's place of residence, access to his confidential records and papers, and the power to contract on his behalf. The settlement agreement was signed by Joseph, Linda, and their respective attorneys, as well as by Gregory's attorney.

While Linda was serving as limited conservator, further litigation erupted between Joseph and Linda pertaining to the administration of the conservatorship. Joseph sought Linda's removal, contending she had improperly relocated Gregory from half-time residence in Joseph's home and had prohibited contact between Gregory and Joseph's family.

In August 2008, the trial court appointed Paul Gaulke as PVP attorney for Gregory. [fn. 1](#) In September 2008, the trial court appointed Thomas Beltran as an expert to advise the court on the appropriateness of Gregory's programming and his reasonable needs, "in the context of the specialized programs and services that he receives."

On July 2, 2009, after Joseph and Linda entered into another settlement agreement, the trial court entered an order providing, inter alia, that Linda would resign as limited conservator immediately upon appointment of a successor limited conservator for

Gregory. On September 11, 2009, the trial court appointed Linda Cotterman (Cotterman) as the successor limited conservator for Gregory.

In April 2011, Joseph filed a petition for termination of Cotterman as limited conservator. Following trial of the matter on September 20, 2011, the trial court granted the petition to remove Cotterman, finding that she had violated various court orders.

On November 18, 2011, the trial court appointed Bruce Hitchman and Lee Ann Hitchman (the Hitchmans) as the successor limited conservators.

<ps:"heading 3"=""2. *The operative petition for instructions.*</ps:"heading

On or about October 20, 2011, Gaulke, Gregory's court appointed attorney, filed a petition for instructions, seeking guidance from the court as to how the new limited conservators could best administer Gregory's limited conservatorship so as to minimize further disputes between the parties. **[214 Cal.App.4th 66]**

Joseph and Linda filed responses thereto. Linda's papers objected to the PVP's petition on the following grounds: it requested powers that were not specifically requested in the petition for appointment of the limited conservator; the petition was too vague to give the parties notice as to what additional powers were being sought; the instructions sought were detrimental to the purposes of the limited conservatorship; the petition did not state sufficient facts to establish that the conservatee's condition necessitated that additional powers be granted; and the petition sought orders in excess of the court's jurisdiction and in violation of the conservatee's civil rights.

On November 18, 2011, the trial court issued its order on the PVP's petition for instructions. As relevant to this appeal, the trial court made certain rulings with respect to the issues of visitation, disclosure of Gregory's records, and replacement of Gregory's supported living services vendor.

(1) The trial court ordered the Hitchmans, the newly appointed limited conservators, to comply with an earlier court order removing My Life Foundation as Gregory's supported living service vendor, and to

retain within 60 days a new successor supported living services vendor "that has not previously cared for the Limited Conservatee, including personal care individuals."

(2) The trial court established the following weekend visitation schedule for Gregory: the first weekend, Saturday and Sunday only, Gregory would determine how to spend his weekend; the second weekend, Saturday and Sunday only, were assigned to Joseph, who would decide how that weekend visitation would be spent with Gregory, with Gregory being able to elect an overnight stay at Joseph's home or elsewhere; the third weekend, Saturday and Sunday only, were assigned to Linda, who would decide how that weekend visitation would be spent with Gregory, with Gregory being able to elect an overnight stay at Linda's home or elsewhere; upon the conclusion of the three-week cycle, the rotation would begin again, with the visitation schedule ongoing until further order of the court.

(3) The trial court ordered all of Gregory's records, including his medical, financial and personal records, be furnished by the Hitchmans to Gregory's parents, in accordance with an earlier court order.

On December 8, 2011, Linda filed a timely notice of appeal from the November 18, 2011 order on the petition for instructions. [fn.2](#) **[214 Cal.App.4th 67]**

CONTENTIONS

Linda contends: the visitation order violates Gregory's constitutional rights to liberty and privacy; the order directing terminating of My Life Foundation as Gregory's supported living services care provider was in excess of the trial court's jurisdiction; and the order mandating disclosure of Gregory's medical, financial and personal records to his parents violates Gregory's constitutional and statutory rights of privacy.

However, the threshold issue for this court is whether Linda has standing to assert these arguments.

DISCUSSION

[1] The right to appeal is purely statutory. (*Jennifer T. v. Superior Court* (2007) [159 Cal.App.4th 254](#),

260.) Code of Civil Procedure section 902 defines "Who May Appeal" from a judgment. (See Code Commissioners' Notes, 17B West's Ann. Code Civ. Proc. (2009 ed.) foll. § 902, p. 10.) The statute provides "'Any party *aggrieved*' may appeal from an adverse judgment. (Code Civ. Proc., § 902.) The test is twofold -- one must be *both a party of record to the action and aggrieved* to have standing to appeal." (*Shaw v. Hughes Aircraft Co.* (2000) [83 Cal.App.4th 1336](#), 1342, italics added.) Thus, notwithstanding an appealable judgment or order, "[a]n appeal may be taken only by a party who has standing to appeal. [Citation.] This rule is jurisdictional. [Citation.]" (*Sabi v. Sterling* (2010) [183 Cal.App.4th 916](#), 947.) It cannot be waived. (*Marsh v. Mountain Zephyr, Inc.* (1996) [43 Cal.App.4th 289](#), 295.)

" 'One is considered "aggrieved" whose rights or interests are injuriously affected by the judgment.' (*County of Alameda v. Carleson* (1971) [5 Cal.3d 730](#), 737 [italics omitted].) Conversely, 'A party who is not aggrieved by an order or judgment has no standing to attack it on appeal.' (*Niles v. City of San Rafael* (1974) [42 Cal.App.3d 230](#), 244.)" (*El Dorado Irrigation Dist. v. State Water Resources Control Bd.* (2006) [142 Cal.App.4th 937](#), 977.)

[2] Injurious effect *on another party* is insufficient to give rise to appellate standing. A "party cannot assert error that injuriously affected only [214 [Cal.App.4th 68](#)] nonappealing coparties." (*Estrada v. RPS, Inc.* (2005) [125 Cal.App.4th 976](#), 985.) This is "no mere technicality, but is grounded in the most basic notion of why courts entertain civil appeals. We are here to provide relief for appellants who have been wronged by trial court error. Our resources are limited and thus are not brought to bear when appellants have suffered no wrong but instead seek to advance the interests of others who have not themselves complained." (*Rebney v. Wells Fargo Bank* (1990) [220 Cal.App.3d 1117](#), 1132.)

Here, Linda's opening brief raises the following assignments of error with respect to the November 18, 2011 order: (1) the visitation order, requiring Gregory to spend weekends with his parents, violates *Gregory's* rights to liberty and privacy; (2) the order terminating My Life Foundation as the contracted provider of Gregory's supported living

services violated *Gregory's* rights under the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.) and was in excess of the court's jurisdiction because there was no exhaustion of administrative remedies before My Life Foundation was replaced as Gregory's provider; and (3) the order directing disclosure of Gregory's records to his parents violates *Gregory's* constitutional and statutory rights of privacy.

[3] Linda has not identified any of her own rights or interests which are injuriously affected by the November 18, 2011 order. Her assignments of error pertain solely to alleged deprivations of Gregory's rights. However, Linda lacks standing to assert error that injuriously affects only Gregory, a nonappealing party. (*Estrada, supra*, 125 Cal.App.4th at p. 985.)

Linda's status as Gregory's concerned mother does not confer standing to appeal on his behalf. With respect to Linda's role vis-à-vis Gregory, the July 2, 2009 order pursuant to settlement agreement contains the following recital: "14. LINDA and JOSEPH agree that they shall not hold any title, occupation, or position in this matter, *other than parent of GREGORY.*" (Italics added.) Gregory, an adult, is under the limited conservatorship of the Hitchmans. In addition, Gregory has his own counsel. He is represented by Attorney Gaulke, a court appointed attorney who is PVP counsel for the limited conservatee. Gregory declined to appeal from the November 18, 2011 order. Linda, who is not personally aggrieved by said order, lacks standing to assert error on Gregory's behalf. [214 [Cal.App.4th 69](#)]

Probate Code section 1829, pertaining to the establishment of a conservatorship, provides: "*Any of the following persons may appear at the hearing to support or oppose the petition:* [¶] (a) The proposed conservatee. [¶] (b) The spouse or registered domestic partner of the proposed conservatee. [¶] (c) *A relative of the proposed conservatee.* [¶] (d) Any interested person or friend of the proposed conservatee." (Italics added.)

This provision entitled Linda to participate in the conservatorship proceeding in the court below. However, merely because Linda was authorized to appear in the matter *below* does not mean she is entitled to prosecute an appeal from the trial court's

order.

[4] As discussed above, standing to appeal is governed by Code of Civil Procedure 902. Absent a showing by Linda that she is injuriously affected by the trial court's order, she lacks standing to appeal. As stated in *Rebney v. Wells Fargo Bank, supra*, 220 Cal.App.3d at page 1132, "The scope of appellate review, however, is never defined by the parameters of trial court jurisdiction, but is instead limited by specialized jurisdictional principles that are unique to appellate litigation. The requirement of standing to appeal is one of those principles, and because it is jurisdictional [citations] it imposes absolute limitations on the appellate court's guardian role."

DISPOSITION

Linda's purported appeal from the November 18, 2011 order is dismissed. Respondents shall recover their costs on appeal.

Kitching, J., and Aldrich, J., concurred.

Appellant's petition for a review by the Supreme Court was denied June 12, 2013, S209942.

-FN 1. PVP denotes a Probate Volunteer Panel attorney (*Hall v. Kafayan* (2010) [190 Cal.App.4th 927](#), 929), who represents the conservatee's interests. (See Prob. Code, § 1470, subd. (a) [court may appoint private legal counsel for a conservatee if the court determines the person is not otherwise represented by legal counsel and that the appointment would be helpful to the resolution of the matter or is necessary to protect the person's interests].)

-FN 2. The November 18, 2011 order on the petition for instructions re administration of Gregory's limited conservatorship is appealable as an order "[a]uthorizing, instructing or directing a fiduciary" (Prob. Code, § 1300, subd. (c).)

Relevant Court Decisions

Freedom of Religion:

"Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or nonattendance." *Everson v. Board. of Education*, 330 U.S. 1, 15-16 (1947)

Comment: An adult conservatee has the right not to attend church services.

Freedom of choice:

"[I]t is clear that among the decisions that an individual may make without unjustified government interference are personal decisions relating to marriage, procreation, contraception, *family relationships*, and child rearing and education." *Carey v. Population Services International*, 431 U.S. 678, 684-85 (1977) (Emphasis added)

Comment: An adult conservatee has the freedom of choice to determine the nature and extent of his or her family relationships.

Freedom of association:

"Freedom of association . . . plainly presupposes a freedom not to associate." Justice Brennan, writing for the majority, in: *Roberts v. United States Jaycees* 468 U.S. 609, 622 (1984)

Comment: An adult conservatee has the right not to associate with a parent or anyone else.

Right Not to Associate:

"Even though developmentally disabled, as an adult Leon has a right not to have contact with appellant if he so chooses. fn. 5 (Welf. & Inst. Code, §§ 4501, 4502.)" (*Conservatorship of Sides* (1989) 211 Cal.App.3d 1086, 1092-1093.)

Comment: In this case, the appellant was the mother of Leon. Leon is a person with a developmental disability. The Court of Appeal opinion cites the Statement of Rights in the Lanterman Act as its authority that the conservatee has the right to refuse contact with a parent. The right to refuse visitation is part of the normal rights afforded to any adult.

Quotes from the Opinion of the United States Court of Appeal

Anderson v Laird 466 F.2d 283 (1972)

Attendance at religious exercises is an activity which under the Establishment Clause a government may never compel.

* * *

Compulsory church attendance was one of the primary restrictions on religious freedom which the Framers of our Constitution sought to abolish. Nonattendance was often treated as an offense which could be severely punished in order to enforce loyalty to an established sect. The "Virginia Bill for Religious Liberty", originally drafted by Thomas Jefferson, was enacted in Virginia in 1786 in the wake of the defeat of the state's tax levy for support of established churches. This legislation culminated James Madison's and Jefferson's struggle for religious liberty in that state.

* * *

The Bill specifically provided: "That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief. . . ."

* * *

In this case, rather than conflicting, the two Clauses complement each other and dictate the same result. Abolition of the attendance requirements enhances rather than violates the free exercise rights of cadets and midshipmen. The Establishment Clause should therefore be read as it was in *Everson*: [*Everson v Board of Education* 330 U.S. 1 (1947)]: "Neither a state nor the Federal Government . . . can force nor influence a person to go to or to remain away from church against his will."

* * *

It is derived from these cases, as well as from history, that freedom from governmental imposition of religious activity is a core value protected by the Establishment Clause, and that therefore a government may not require an individual to engage in religious practices or be present at religious exercises. The "purpose and effect" test developed in *McGowan v. Maryland* does not undermine this principle. The test is properly applied when there is some ambiguity about the nature of the activity imposed by the government, and thus some question whether the values protected by the Establishment Clause are actually threatened.

Role of an Attorney for a Conservatee

California Supreme Court

Conservatorship of Person John, 48 Cal.4th 131 (2010)

(Proposed conservatee is entitled to effective assistance of counsel.)

Another important protection is the requirement that the court appoint an attorney for the proposed LPS conservatee within five days after the date of the petition. (§ 5365.) Like all lawyers, the court-appointed attorney is obligated to keep her client fully informed about the proceedings at hand, to advise the client of his rights, and to vigorously advocate on his behalf. (Bus. & Prof.Code, § 6068, subd. (c); *Conservatorship of David L.* (2008) 164 Cal.App.4th 701, 710 [a proposed LPS conservatee has a statutory right to effective assistance of counsel]; *Conservatorship of Benvenuto* (1986) 180 Cal.App.3d 1030, 1037, fn. 6 [“Implicit in the mandatory appointment of counsel is the duty of counsel to perform in an effective and professional manner.”]; see *Mary K.*, supra, 234 Cal.App.3d at p. 272; *Conservatorship of Ivey* (1986) 186 Cal.App.3d 1559, 1566.)

Connecticut Supreme Court

Gross v. Rell, 40 A.3d 240 (Conn. 2012)

(Attorney for conservatee must advocate for stated wishes, not best interests, of client)

Even though this choice [between advocating for the client’s wishes and protecting the client’s best interests] may be difficult to make personally, its resolution among courts and writers has been rather uniform. Most favor advocacy. The most significant reason is the belief that a lawyer using a more selective approach usurps the function of the judge or jury by deciding her client’s fate.”); Office of the Probate Court Administrator, “Performance Standards Governing Representation of Clients in Conservatorship Proceedings,” (1998) p. 1 (“The attorney is to represent the client zealously within the bounds of the law. . . . The attorney must advocate the client’s wishes at all hearings even if the attorney personally disagrees with those wishes.”).

Accordingly, we conclude that the primary purpose of the statutory provision of § 45a-649 requiring the Probate Court to appoint an attorney if the respondent is unable to obtain one is to ensure that respondents and conservatees are fully informed of the nature of the proceedings and that their articulated preferences are zealously advocated by a trained attorney both during the proceedings and during the conservatorship. The purpose is not to authorize the Probate Court to obtain the assistance of an attorney in ascertaining the respondent’s or conservatee’s best interests. Because the function of such court-appointed attorneys generally does not differ from that of privately retained attorneys in other contexts, this consideration weighs heavily against extending quasi-judicial immunity to them.

New Jersey Supreme Court:
In the Matter of M.R., 638 A.2d 1274 (N.J. 1994)

(Attorney for conservatee must advocate for client's stated wishes)

Ordinarily, an attorney should "abide by [the] client's decisions concerning the objectives of representation," *RPC* 1.2(a), and "act with reasonable diligence ... in representing [the] client," *RPC* 1.3. The attorney's role is not to determine whether the client is competent to make a decision, but to advocate the decision that the client makes. That role, however, does not extend to advocating decisions that are patently absurd or that pose an undue risk of harm to the client.

An adversarial role for the attorney recognizes that even if the client's incompetency is uncontested, the client may want to contest other issues, such as the identity of the guardian or, as here, the client's place of residence. *Agenda for Reform, supra*, 13 *Mental & Physical Disability L. Rep.* at 284. With proper advice and assistance, the developmentally-disabled client may be able to participate in such a decision. *See id.* at 285 (commenting on Recommendation II-C and quoting American Bar Association Model Rules of Professional Conduct (1983), *Rule* 1.14, *Client Under a Disability*). From this perspective, the role of an attorney for a developmentally-disabled person is like that of an attorney representing any other client.

Advocacy that is diluted by excessive concern for the client's best interests would raise troubling questions for attorneys in an adversarial system. An attorney proceeds without well-defined standards if he or she forsakes a client's instructions for the attorney's perception of the client's best interests. Lawrence A. Frolik, *Plenary Guardianship: An Analysis, A Critique and A Proposal for Reform*, 23 *Ariz.L.Rev.* 599, 635 (1981). Further, "if counsel has already concluded that his client needs 'help,'" he is more likely to provide only procedural formality, rather than vigorous representation. *Id.* at 634-35; *see also* Maria M. Das-Neves, *Note, The Role of Counsel in Guardianship Proceedings of the Elderly*, 4 *Geo. J. Legal Ethics* 855, 863 (1991) (stating that "[i]f the attorney is directed to consider the client's ability to make a considered judgment on his or her own behalf, the attorney essentially abdicates his or her advocate's role and leaves the *177 client unprotected from the petitioner's allegations"). Finally, the attorney who undertakes to act according to a best-interest standard may be forced to make decisions concerning the client's mental capacity that the attorney is unqualified to make. Frolik, *supra*, 23 *Ariz.L.Rev.* at 635.

In the related context of civil commitment proceedings, other jurisdictions have mandated that counsel zealously protect the wishes of the proposed ward. *See Lynch v. Baxley*, 386 *F. Supp.* 378, 389 (M.D. Ala. 1974) (finding that proposed ward has right "to representative counsel occupying a traditional adversarial role"); *Lessard v. Schmidt*, 349 *F. Supp.* 1078, 1099 (E.D. Wis. 1972) (holding that appointing non-adversarial guardian *ad litem* did not "satisfy the constitutional requirement of representative counsel"), *vacated on other grounds*, 414 *U.S.* 473, 94 *S.Ct.* 713, 38 *L.Ed.2d* 661 (1974); *In re Link*, 713 *S.W.2d* 487, 496 (Mo. 1986) (holding that appointed counsel must "act as an advocate" for proposed ward); *Quesnell v. State*, 83 *Wash.2d* 224, 517 *P.2d* 568, 576 (1974) (noting that guardian *ad litem* must make "affirmative effort to provide protection ... for the fundamental rights of the alleged mentally ill ward"); *State ex rel Hawks v. Lazaro*, 157 *W. Va.* 417, 202 *S.E.2d* 109, 126 (1974) (declaring that guardian *ad litem* must "represent his client as zealously as the bounds of ethics permit"). In *Link, supra*, the Supreme Court of Missouri discussed the role of

appointed counsel in guardianship proceedings and concluded that "to the extent an affected individual appropriately understands what is at stake and expresses a desire to waive or exercise a particular right, that desire must be honored, even if counsel disagrees with the wisdom of the choice." 713 S.W.2d at 496.

Until such time as we amend *Rule 4:86*, we offer the following guidelines to assist the attorney for an incompetent. First, a declaration of incompetency does not deprive a developmentally-disabled person of the right to make all decisions. The primary duty of the attorney for such a person is to protect that person's rights, including the right to make decisions on specific matters. Generally, the attorney should advocate any decision *178 made by the developmentally-disabled person. On perceiving a conflict between that person's preferences and best interests, the attorney may inform the court of the possible need for a guardian *ad litem*. See 1994 Report, *supra*, 3 N.J.L. at 36 (noting Comment to proposed amendment to Rules 5:8A and 5:8B). Our endeavor is to respect everyone's right of self-determination, including the right of the developmentally disabled. For those who cannot exercise that right, the courts will protect their best interests.

Massachusetts Supreme Court

Commonwealth v. Patton, 458 Mass. 119 , 128 (2010)

(Conservatee is entitled to effective assistance of counsel.)

"[I]n a proceeding that involves a person's liberty or a fundamental liberty interest, in which a person has a right to appointed counsel, from whatever source, the person is entitled to the effective assistance of counsel whether counsel is appointed or retained."

Illinois Supreme Court

People v. Austin M., 975 N.E.2d 22 (Ill. 2012)

(An attorney serving a dual role has a *per se* conflict of interest)

When counsel attempts to fulfill the role of GAL as well as defense counsel, the risk that the minor's constitutional and statutory right to counsel will be diluted, if not denied altogether, is too great. See *In re Lisa G.*, 504 A.2d at 5; *In re Dobson*, 212 A.2d 620, 622 (Vt. 1965) ("[A] lawyer attempting to function as both guardian ad litem and legal counsel is cast in the quandry [*sic*] of acting as both attorney and client, to the detriment of both capacities and the possible jeopardizing of the infant's interests."). Even though a delinquency trial is not as adversarial as a criminal trial, the State still has the burden of proving that the juvenile committed the alleged offense beyond a reasonable doubt. Only a dedicated and zealous advocate can hold the State to that burden. We conclude, therefore, that the interests of justice are best served by finding a *per se* conflict when minor's counsel in a delinquency proceeding simultaneously functions as both defense counsel and guardian *ad litem*.

GREG DEMER'S VIEWS ON CHURCH

Excerpts from Documents and Transcripts

Background (by Linda Demer, Gregory's Mother)

I first observed Greg's resistance to go to church when he was about 11 y.o. Before that, he and his brother came to an Episcopal church with me. Sitting through the service was challenging for them, so we went to the Sunday school instead. After the divorce and the start of alternate week custody, Joe took the boys to his church on his weeks. About that time, the boys started objecting to church in general, so I started taking them to gymnastics classes and volunteer work instead. But they said they still had to go to church on their father's Sundays. After Greg moved to his own apartment in 2008, the Court required Greg to go with his father all day every Sunday, so he was being taken to church every Sunday until Greg's first professional conservator was appointed and gradually recognized Greg's objections. She offered him some "free personal days" as an option to church, and he requested it increasingly often. When she was replaced in 2011, the Court ordered Greg to spend every third weekend with his father, and the new conservators allowed no options.

Greg's brother has suggested that Greg's objection to church may be severe boredom. Greg's objections to church were usually unrecorded statements to his support staff, teachers, coaches, relatives, friends' parents, etc. Perhaps that can be documented through interviews. The instances in which Greg's statements were recorded or reported by independent parties are indicated below. Digital audio files for IPP transcripts as well as the Original Court Transcripts are available.

REPORT OF WESTSIDE REGIONAL CENTER ON PETITION TO REMOVE CONSERVATOR

Assistant Director for Client Services, William A. Feeman

Gregory Demer's Client Program Coordinator, Gavin Linderman

- August 1, 2011 (Age 24; #11-84A)

Page 1-2

"Gregory does not wish to change anything about his present program and services, except that he does not want to have to go to church with his father on Sunday mornings."

REPORT FROM GREG'S COURT-APPOINTED ATTORNEY, PAUL GAULKE, TO THE PROBATE JUDGE

- August 4, 2011 (Age 24; #11-81)

"When I asked him if he sees his father on **Sundays** his response was, 'I do not. I will never see him again. Father is annoying.' If I am to advocate for what my client tells me, then he should only see his parents when he is agreeable."

PRE-TRIAL REPORT FROM GREG'S COURT-APPOINTED ATTORNEY, PAUL GAULKE, TO THE TRIAL JUDGE

• September 16, 2011 (Age 24; #11-97H)

"Petitioner (Joseph Demer, Greg's father) has been adamant at all times about attending **church** with the Conservatee on Sundays, however the Conservatee's activities conflict with the **Church** service."

EXAMPLES OF EMAILS FROM GREG

From: Greg Demer <gregdp40@gmail.com>

Date: Sat, May 14, 2011 at 9:30 AM

Subject: My Schedule

To: Joseph Demer <JLD@ucla.edu>, Linda Demer <lindademmer@gmail.com>, Linda Cotterman <lindacotterman@gmail.com>, timdehaven@yahoo.com

Hi dad on Sunday I would like to have my **Personal day** I made Plans to spend it with my friends and my girlfriend instead I will go to breakfast with friends and hang out with them I will go to the 99 cents store and volunteer at the hangar and have lunch afterwards on June 5 I will see you on father's day love Greg

From: Greg Demer <gregdp40@gmail.com>

Date: Sat, Oct 15, 2011 at 8:51 AM

Subject: My Schedule

To: [same]

Dad I don't Want to go flying with you I would like my **Personal day this Sunday** and next Sunday

From: Greg Demer <gregdp40@gmail.com>

Date: Sat, Oct 29, 2011 at 8:14 AM

Subject: My schedule

To: [same]

Dear dad I would like my Own **Personal day** tomorrow on October 30 I will have a free day Love Greg

From: Greg Demer <gregdp40@gmail.com>

Date: Sat, Nov 12, 2011 at 3:56 PM

Subject: My Schedule

To: [same]

Dear Dad I Would like a **free Personal day** tomorrow love Greg

From: Greg Demer <gregdp40@gmail.com>

Date: Sat, Nov 19, 2011 at 8:37 AM

Subject: My Schedule

To: [same]

Hello Dad I would like my **Personal day On Sunday** November 20 and the following weekend November 27 I don't want to see you I rather spend time with friends love Greg

From: Greg Demer <gregdp40@gmail.com>

Date: Sat, Nov 26, 2011 at 7:52 PM

Subject: My Scedule

To: [same]

Dear Dad I would like a free day I knew my own rights I will have a free personal day love Greg

From: Greg Demer <gregdp40@gmail.com>

Date: Sat, Dec 3, 2011 at 9:14 PM

Subject: My Schedule

To: [same]

I would like a **personal day tomorrow Sunday** December 4. 2011. Love, Greg

TRANSCRIPT OF INDIVIDUAL PROGRAM PLAN (IPP) MEETING

WESTSIDE REGIONAL CENTER

Chaired by Debra Ray, Assistant Director of Client Services, and
Gavin Linderman and Charlene Williams, Program Coordinators

• February 7, 2012 (Age 25; #12-58)

Page 1

Greg Demer: I have the right to leave, so I have the right to have my **free** personal day.

...

Page 11

Greg Demer: I don't like **church**.

Page 12

Greg Demer: I don't like going to **church**.

...

Greg Demer: ...I don't like going to **church**, and I like having a free day every **Sunday**.

...

Greg Demer: But I don't like **church**.

Page 13

Greg Demer: I don't like **church**, and I say Phooey on **church**.

...

Page 89

Debra Ray: ...OK, that's it, there is the one thing that we do have to talk to the Conservators about, in terms of, that Greg has stated that he doesn't like going to **church**. He should not be forced to go to **church**.

LeeAnn Hitchman (Limited Conservator): Is that appropriate...

Greg Demer (Limited Conservatee): I don't want to be forced to go **church**, Dad.

LeeAnn Hitchman (Limited Conservator): ...is that appropriate in this IPP meeting?

Gregory's Objections to Church

Page 3

Page 90

Debra Ray (WRC): And at that point, that feedback can be shared with the team.

Joe Demer (Father): Why does it have to be shared, I mean, why are Gregory's **religious practices** of interest or of relevance to this team?

...

Debra Ray (WRC): Just a moment, just a moment. Yes, because he clearly said, in the meeting today, that **this** is what he doesn't want to do, this was without any prompting from anyone. This is, he was very adamant and clear about what he doesn't want to do...

Joe Demer (Father): And what, what is the Regional Center going to do about it?

Debra Ray (WRC): So, he shouldn't have to be forced, so he shouldn't have to be forced, ...well, that will be the Conservators, that's why the Conservators will have to be involved with that whole process...

...

Debra Ray (WRC): And, again, it has to be set out because he mentioned that he doesn't want to do that. He also mentioned that, about the visitation, that he..., and I am not even bringing that up.

Joe Demer (Father): You're not? {chuckle}

...

Debra Ray (Regional Center Representative): I think we have addressed the, about the, having to go to **church**, we just addressed that. Are we in agreement with that?

LeeAnn Hitchman (Greg's Professional Co-Conservator): Wait, what is it, what is it that we said?

Debra Ray: That he doesn't want, that Greg doesn't want to attend **church**.

Bruce Hitchman (Greg's other Professional Co-Conservator): We heard him say that. That doesn't mean that he doesn't want to attend **church**.

Greg Demer: Dad, will you listen to me, I don't want to attend **church**, I just want to have my free personal day, and I don't want to go with you.

INDIVIDUAL PROGRAM PLAN (IPP) REPORT

from Westside Regional Center

Service Coordinator, Gavin Lindeman

• February 7, 2012 (Age 25; #12-52)

"During the IPP, Greg stated without prompting that things he dislikes are going to **church** and going with his dad on Sundays."

PROBATE INVESTIGATOR REPORT

Senior Investigator Genita Braggs

•November 30, 2012 (Age 25; #12-152)

Genita Braggs: "When asked about visits, Gregory said he has visits with his father every **Sunday** 8:00 AM – 8:00 PM and he does not like going to **church**."

Ms. Braggs: "Several times during the interview, Gregory said, 'I want to be free from it **[church]**.'"

Ms. Braggs: "...he asked not to go to **church** every Sunday..."

TRANSCRIPT OF HEARING BEFORE JUDGE ROY PAUL IN PROBATE COURT

STANLEY MOSK COURTHOUSE

• October 4, 2013 (Age 26; #Transcr File)

Page 2

GREGORY DEMER: I DON'T WANT MY RIGHTS VIOLATED.

...

Pages 6-7

GREGORY DEMER: BUT I JUST DON'T WANT MY FRIENDS –

THE COURT: MR. DEMER, LET ME JUST DO THE FOLLOWING: LET ME HEAR FROM THE ATTORNEY.

...

THE COURT: MR. DEMER, HOLD ON FOR A SECOND.

GREGORY DEMER; OKAY. I'M WAITING.

Page 17

GREGORY DEMER: NEVER MIND, YOUR HONOR, I WANT TO HAVE MY FRIENDS PROTECTED SO I HAVE THE RIGHT TO SAY NO TO DAD, AND I'LL DO IT BY MYSELF, YOUR HONOR. NO, I DON'T WANT TO SEE YOU, DAD. I DON'T WANT TO GO FLYING WITH YOU ANYMORE...YOUR HONOR, I DON'T WANT TO SEE MY DAD AND GO FLYING WITH HIM ANYMORE...

THE COURT: OKAY. THANK YOU.

- RECESS -

Page 18

...

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

THE COURT: WE HAVE CERTAIN RULES AND PROCEDURES, AND SO...

...

Page 36

GREGORY DEMER: IF YOU PLEASE, YOUR HONOR –

THE COURT: HOLD ON FOR ONE MORE SECOND...

Gregory's Objections to Church

Page 5

...

Page 37

THE COURT: MAY WE NOW HEAR FROM MR. DEMER?

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

**TRANSCRIPT FROM HEARING BEFORE JUDGE DANIEL MURPHY, PROBATE COURT
STANLEY MOSK COURTHOUSE**

• April 28, 2014 (Age 27; #TRANSCR FILE)

Page 2 (Ms. Maillian is Greg's most recent Court-appointed attorney)

MR. GREGORY DEMER: YOUR HONOR, I HAVE TO -- MY NAME IS GREG. I HAVE THE RIGHT TO SPEAK UP FOR MYSELF AND SAY NO TO MY DAD.

THE COURT: DON'T WORRY. HI, GREG. HOW ARE YOU?

Page 11

WHAT I PLAN ON HAVING -- WHAT I PLAN ON DOING IS SPEAKING WITH MS. MAILLIAN AND GREGORY IN MY CHAMBERS AND WITH JUST MS. MAILLIAN AND GREGORY.

...

MS. LINDA DEMER: YOUR HONOR, MAY I ASK THAT THE REGIONAL CENTER REPRESENTATIVE BE PRESENT AS WELL IN ORDER TO HELP TRANSLATE SO GREGORY --

MS. MAILLIAN: YOUR HONOR, TRANSLATION IS NOT NECESSARY.

THE COURT: NO. AT THIS TIME, I'M ONLY GOING TO HAVE GREGORY -- I THINK THE LESS, THE BETTER. I'M ONLY GOING TO HAVE GREGORY AND HIS PVP ATTORNEY.

MS. LINDA DEMER: IF I MAY. I THINK THAT THE DISABILITIES RIGHTS REQUIRE ACCOMMODATION, AND HE HAS A LANGUAGE DISORDER. AND --

THE COURT: MA'AM, IF THERE'S ANY ISSUES WHERE I'M HAVING DIFFICULTY HEARING HIM OR UNDERSTANDING HIM OR --

MS. LINDA DEMER: I MEAN, HIM TO UNDERSTAND WHAT HE'S BEING ASKED.

MR. ADLER: HIS LAWYER WILL BE PRESENT, YOUR HONOR, SO --

THE COURT: MS. MAILLIAN HERE WILL BE PROTECTING HIS RIGHTS, IF THAT'S NECESSARY.

MR. GREGORY DEMER: I NEED MY RIGHTS PROTECTED, SIR.

THE COURT: DON'T WORRY, SIR. THAT'S WHAT I PLAN ON DOING.

Page 14

(IN CHAMBERS:)

...

MS. MAILLIAN: AND DO YOU WANT TO SPEND TIME WITH YOUR DAD?

MR. GREGORY DEMER: NO.

MS. MAILLIAN: WHY DON'T YOU WANT TO SPEND TIME WITH YOUR DAD?

MR. GREGORY DEMER: I DON'T WANT TO SPEND TIME WITH MY DAD BECAUSE HE IS SCARY.

MS. MAILLIAN: HOW IS YOUR DAD SCARY?

MR. GREGORY DEMER: MY DAD IS SCARY BECAUSE-

...

HE TRIES TO HURT ME AND HE TRIES TO TELL LIES TO ME.

...

MR. GREGORY DEMER: ... I KNOW HE'S SCARY, BECAUSE I JUST WANT TO BE AWAY FROM HIM.

MS. MAILLIAN: WHY DO YOU WANT TO BE AWAY FROM HIM?

MR. GREGORY DEMER: BECAUSE --

MS. MAILLIAN: TELL ME WHY.

MR. GREGORY DEMER: -- HE FRIGHTENS ME A LOT.

...

MS. MAILLIAN: TELL US HOW -- WHAT -- TELL US WHAT YOUR DAD HAS DONE THAT MAKES YOU WANT TO LOCK HIM UP?

MR. GREGORY DEMER: MY DAD TRIES TO HURT MY BRAIN, AND HE TRIES TO HURT MY HEAD.

...

MS. MAILLIAN: WHEN DO YOU TELL YOUR DAD TO STOP?

MR. GREGORY DEMER: WHEN HE TRIES NOT TO OPEN THE DOOR.

MS. MAILLIAN: COULD YOU EXPLAIN WHAT YOU MEAN BY THAT; TRIES NOT TO OPEN THE DOOR.

MR. GREGORY DEMER: HE TRIES NOT TO OPEN THE DOOR. HE KEEPS THE DOOR LOCKED.

...

MR. GREGORY DEMER: IT WAS A SCARY THOUGHT.

MS. MAILLIAN: WHAT WAS SCARY ABOUT IT?

MR. GREGORY DEMER: IT WAS REALLY ANNOYING.

MS. MAILLIAN: CAN YOU TELL ME WHAT WAS ANNOYING?

MR. GREGORY DEMER: IT WAS THE FRIGHTENING OF THE EASTER BUNNY AND GOING TO **CHURCH**, AND I DON'T LIKE GOING TO **CHURCH**, LEANNE.

MS. MAILLIAN: OKAY. DID YOU SEE THE EASTER BUNNY?

MR. GREGORY DEMER: I DID SEE THE EASTER BUNNY.

MS. MAILLIAN: DID YOU HAVE FUN WITH THE EASTER BUNNY?

...

page 28

(Back in Court)

MR. GREGORY DEMER: IF YOU PLEASE, SIR, I HAVE THE RIGHT TO SAY NO TO DAD. AND YOUR HONOR, I WANT TO BE AWAY FROM DAD.

Page 29

MR. GREGORY DEMER: IF YOU PLEASE, SIR, I MAKE THE -- IF YOU PLEASE, I WILL MAKE THE RULES NOW. THE RULES ARE, I'M NOT GOING TO SEE MY DAD..

Page 31

THE COURT: HE'S VERY BRIGHT AND ARTICULATE INDIVIDUAL, BUT I THINK IN REGARDS TO THE SOCIAL CONTACT, I DON'T THINK HE SHOULD BE INVOLVED IN THE DECISION-MAKING. I THINK THE ENTIRE -- THAT I WOULD CONFER THE DECISION ON SOCIAL CONTACTS TO THE CONSERVATORS,...

Page 32

MS. OCHELTREE: -- OUR POSITION. THE REGIONAL CENTER'S OPINION IS THAT PEOPLE SHOULDN'T HAVE THEIR RIGHTS TAKEN AWAY UNLESS -- EVEN THOUGH THE CONSERVATEE'S OPINION MIGHT NOT MAKE SENSE OR WISHES MIGHT NOT MAKE SENSE TO OTHER PEOPLE -- WE BELIEVE IN PRESERVING RIGHTS TO THE MAXIMUM EXTENT POSSIBLE.

Page 36

MY CONCERN IS, THOUGH, THIS HAS BEEN AN EXTREMELY HEAVILY LITIGATED MATTER, AND MY HOPE WOULD BE THAT WITH THIS DECISION, THAT THERE WILL BE -- KIND OF -- WE CAN STOP THE LITIGATION FOR A WHILE...

LETTER FROM GREG'S FIRST PROFESSIONAL CONSERVATOR

Linda Cotterman, Professional Fiduciary

April 20, 2014

Each week when I would visit Greg to make his next week's schedule, he would emphatically state, "I don't want to see my Dad. I don't want to go to **church** with Dad and Melissa. I want to go to the airport and work on the planes."

1 Linda L. Demer, MD, PhD

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IN PRO PER

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IN RE:

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The Limited Conservatorship of
Gregory R. Demer,

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Limited Conservatee.

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**CONFORMED COPY
ORIGINAL FILED**
Superior Court of California
County of Los Angeles

APR 21 2014

Sherri R. Carter, Executive Officer/Clerk
By Thea Blackwell, Deputy

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

Case No. SP006273

**DECLARATION IN RESPONSE TO THE
AMENDED PETITION FOR
AUTHORITY TO CONTROL LIMITED
CONSERVATEE'S SOCIAL AND
SEXUAL CONTACTS AND
RELATIONSHIPS - SHARED POWERS**

Date: April 25, 2014
Time: 8:30 a.m.
Dept.: 29

DECLARATION OF LINDA L. DEMER

I, Linda L. Demer, M.D., Ph.D., declare as follows:

1. I am an adult resident of the State of California and competent to make this Declaration.

The facts stated herein are true of my own personal knowledge, except as to those matters stated on information and belief, and as to those matters I believe them to be true.

2. I am the mother of Mr. Gregory R. Demer ("Mr. Demer" or "Mr. Greg Demer"), the developmentally disabled adult subject to this limited conservatorship of his person. I submit this Declaration in response to the co-conservators' amended petition for "shared powers" to control

1 Mr. Demer's social and sexual contacts and relationships.

2 3. For the 9 years since Mr. Greg Demer reached adulthood, he has retained exclusive
3 authority to exercise his constitutional right to make his own social decisions. In my view, he has
4 been successful.

5 4. In their amended petition, the Conservators raise the concern that Mr. Demer's visitation
6 orders are too restrictive, are not in his best interest, and preclude the possibility of weekend
7 employment. While I agree with those concerns, the proposed relief is incongruous: to -- in effect
8 -- remove Mr. Demer's social rights "in order to" adjust visitation. The natural relief would be to
9 modify the visitation orders to give priority to employment and to give back Mr. Demer's right to
10 self-determination during parental visitation.

11 5. In June 2008, about the time that Mr. Demer moved into his own apartment, the Probate
12 Investigator raised concerns and suggested that Mr. Demer's "time spent in his father's home be
13 closely scrutinized." Subsequently, further concerns were raised. Mr. Demer's Regional Center
14 Report said: "During the IPP, Greg stated without prompting that things he dislikes are going to
15 church and going with his dad on Sundays." Mr. Demer's psychiatrist of about 2 decades, a world
16 authority on autism, reported that "Greg made it very clear that he has had fears and anxieties in
17 the presence of his father..." Mr. Demer's first court-appointed attorney concluded in his
18 pleading, "Gregory Demer does not wish to see his father at this time. He should not be forced to
19 do so." Mr. Demer has described his fears and objections in his own words each time he has had a
20 chance to speak before the Court.

21 6. I wholeheartedly support Mr. Demer having a good relationship with his father. I believe
22 the right way - and only effective way - to achieve this is to empower Mr. Demer with control
23 over: how visitation occurs, whether he can bring support staff, and when he can go back to his
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1 apartment. The Conservators have seen, first-hand, how effective empowerment is in Mr.
2 Demer's ability to overcome fear and resistance. In visitation with me, I have always empowered
3 Mr. Demer to decide whether or not to visit.
4

5 7. Professionals also support empowering Mr. Demer. One of his Court-appointed
6 psychologists filed a report stating that "Certainly, Gregory should never be forced to participate
7 in optional activities he chooses to avoid." Mr. Demer's psychiatrist concluded "it is not in his
8 best interest to be forced to visit with his father at this time or in the immediate future." Another of
9 his Court-appointed psychologists filed a report recommending that "the decision for the visit
10 should be left entirely up to Greg's choosing," and that "a neutral, non-biased individual should
11 accompany Greg on visits with his father. The length of time that Greg is under supervised
12 [visitation] should be based on Greg's level of comfort." The Regional Center, charged with
13 responsibility for Mr. Demer's state-supported services and rights under the Lanterman Act, has
14 filed a Declaration in this proceeding stating that Mr. Demer should retain his social rights and
15 that he alone should decide whether to visit with someone or not.
16

17 8. The current orders result in Mr. Demer being subjected to prolonged "visits" away from
18 his apartment under court-ordered parental control. Orders also have been issued directing Mr.
19 Demer's support staff to "prompt and redirect" him to wait at his apartment until his father picks
20 him up for court-mandated visitation -- even when Mr. Demer asks to leave before the "visit."
21

22 9. I understand the Lanterman Act and the Probate Code state that a limited conservatee
23 should retain as many rights as possible and those rights should only be restricted upon proof by
24 clear and convincing evidence that such restriction is needed to protect the limited conservatee
25 from harm. I am not aware that any such evidence has been presented.
26

27 10. The amended petition purports to seek "shared" authority with Mr. Demer. However, it
28

1 includes a provision giving the co-conservators veto power. Hence, in effect, it is a petition to
2 remove -- not to share -- Mr. Demer's social rights.

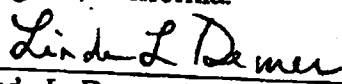
3 11. I am informed and believe that Mr. Demer's attorney has received copies of letters from
4 people who have known Mr. Demer for many years. I understand that the writers explain that, in
5 their opinion, based on their observations, Mr. Demer has not made poor social decisions and
6 should retain his right to make social decisions. I understand that Mr. Demer is entitled to legal
7 counsel who will advocate for his stated wishes and his Constitutional and statutory rights to make
8 his own social decisions. If Mr. Demer's current court-appointed attorney will hear him, advocate
9 for his rights, and provide effective assistance of counsel, my involvement in the proceedings will
10 be unnecessary.

11
12 12. I respectfully suggest that this Honorable Court consider accommodating Mr. Demer's
13 autism by allowing him to wait and to address the Court in a calm setting, separate from the
14 hearing proceedings, where he can receive explanations in language he can understand.

15
16
17 My purpose in presenting this Declaration is to offer the Court my insight on the simple solution
18 of empowering Mr. Demer. I respectfully request to be allowed to abstain from this litigation. I
19 do not intend to file an objection; I do not request an evidentiary hearing on the Amended Petition;
20 and I do not intend to participate in any further hearings on the amended petition unless I am
21 compelled by court order to do so. I defer to this Honorable Court to protect Mr. Demer's rights.

22
23 I declare under penalty of perjury that the foregoing is true and correct.

24 Executed this 21st day of April, 2014, at Los Angeles, California.

25 
26 Linda L. Demer, MD, PhD
27 In Pro Per

1 Judith A. Enright, California State Bar No. 76336
2 Julie A. Ocheltree, California State Bar No. 180146
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8 Attorneys for WESTSIDE REGIONAL CENTER

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF LOS ANGELES
12

13 In Re the Probate Conservatorship of
14 the Person of

15 GREGORY R. DEMER,

16 Limited Conservatee.

17) CASE NO. SP006273

18) DECLARATION OF WILLIAM FEEMAN
19) IN OBJECTION TO PETITION FOR
20) AUTHORITY TO CONTROL LIMITED
21) CONSERVATEE'S SOCIAL AND
22) SEXUAL CONTACTS AND
23) RELATIONSHIPS

24) [Probate Code Section 1827.5]

25) Judge: The Honorable Joseph S. Biderman
26) Hearing Date: August 9, 2012
27) Hearing Time: 8:30 a.m.
28) Dept.: WE - A

ENRIGHT & OCHELTRREE, LLP
ATTORNEYS AT LAW

19 I, WILLIAM FEEMAN, BS, RN, CDDN, declare as follows:

20 1. I am the Assistant Director of Client Services at Westside Regional Center
21 ("WRC") and have been involved in Gregory Demer's services at WRC for many years. I
22 have personal knowledge of the facts set forth in this declaration. If called upon as a
23 witness to testify, I could and would testify as stated below.

24 2. In accordance with Probate Code section 1827.5, WRC strongly recommends
25 against granting the Limited Conservators power over Gregory Demer's social and sexual
26 contacts and relationships.

27 3. There are very few circumstances in which WRC would recommend such
28 power and Gregory Demer certainly has not presented any such circumstances.

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4. Mr. Demer should be permitted to make his own choices about whom he spends time with and what he does with his time. Based upon his voluminous records at WRC, he has never demonstrated behavioral issues which would justify termination of his right to make his own such choices.

5. To the contrary, Gregory Demer has demonstrated an ability to create a rich social and work life. It would be a very sad thing for him to lose the ability to continue with his volunteer work and preferred socialization simply to satisfy his parent's and conservators' need to control his social life.

I declare under penalty of perjury, under the laws of the State of California, that foregoing is true and correct. Executed this 2nd day of August, 2012, at Culver City, California.


WILLIAM FREEMAN

ENRIGHT & OCHELTRIE, LLP
ATTORNEYS AT LAW

1 Judith A. Enright, California State Bar No. 76336
2 Julie A. Ocheltree, California State Bar No. 180146
3 ENRIGHT & OCHELTRREE, LLP
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7 Facsimile: (310) 273-7635

8 Attorneys for WESTSIDE REGIONAL CENTER

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF LOS ANGELES**

| | | |
|---|---|--|
| 11 In Re the Probate Conservatorship of |) | CASE NO. SP006273 |
| 12 the Person of | | DECLARATION OF WILLIAM FEEMAN |
| 13 GREGORY R. DEMER, |) | IN RENEWED OBJECTION TO PETITION |
| 14 | | FOR AUTHORITY TO CONTROL |
| 15 Limited Conservatee. | | LIMITED CONSERVATEE'S SOCIAL |
| | | AND SEXUAL CONTACTS AND |
| |) | RELATIONSHIPS |
| |) | [Probate Code Section 1827.5] |
| |) | Judge: The Honorable David S. Cunningham |
| |) | Hearing Date: February 26, 2014 |
| |) | Hearing Time: 8:30 a.m. |
| |) | Dept.: 29 |

19
20 I, WILLIAM FEEMAN, BS, RN, CDDN, declare as follows:

21 1. I am the Director of Client Services at Westside Regional Center ("WRC")
22 and have been involved in Gregory Demer's services at WRC for many years. I have
23 personal knowledge of the facts set forth in this declaration. If called upon as a witness to
24 testify, I could and would testify as stated below.

25 2. This Declaration supplements the report submitted to the court by Charlene
26 Williams, Gregory Demer's Service Coordinator at WRC, on or about February 13, 2014.
27 It also supplements the declaration submitted by me on or about August 2, 2012.
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3. In accordance with Probate Code section 1827.5, WRC still strongly recommends against granting the Limited Conservators power over Gregory Demer's social and sexual contacts and relationships.

4. There have been no changes between the present and August 2, 2012, which would justify the issuance of the requested powers. Gregory has a supported living program. He lives in his own apartment and has staff with him twenty-four hours a day. He works, volunteers, recreates and generally manages his life without difficulty. He has shown no behavior or tendency that would require the intercession or protection of a conservator in relation to his social and sexual contacts and relationships.

5. The Lanterman Developmental Disabilities Services Act, ("Lanterman Act") set forth at Welfare and Institutions Code section 4500 and following, grants rights and responsibilities to individuals with developmental disabilities, such as Mr. Demer. Section 4502 provides, in pertinent part, as follows:

Persons with developmental disabilities have the same legal rights and responsibilities guaranteed all other individuals by the United States Constitution and laws and the Constitution and laws of the State of California. No otherwise qualified person by reason of having a developmental disability shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity, which receives public funds.

It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: . . .

(j) A right to make choices in their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation.

In Welfare and Institutions Code section 4501, the California Legislature stated its intent, describing the services and supports which are available to people with developmental disabilities, in part, as follows:

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Services and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age. Consumers of services and supports, and where appropriate, their parents, legal guardian, or conservator, should be empowered to make choices in all life areas. These include promoting opportunities for individuals with developmental disabilities to be integrated into the mainstream of life in their home communities, including supported living and other appropriate community living arrangements. In providing these services, consumers and their families, when appropriate, should participate in decisions affecting their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way in which they spend their time, including education, employment, and leisure, the pursuit of their own personal future, and program planning and implementation. The contributions made by parents and family members in support of their children and relatives with developmental disabilities are important and those relationships should also be respected and fostered, to the maximum extent feasible, so that consumers and their families can build circles of support within the community.

6. With the services that are available to him and the support that he has from his staff, his family and Westside Regional Center, there is no reason to take away Greg Demer's right to control his own social and sexual contacts and relationships. It is respectfully submitted that removing that right would deprive Mr. Demer of the rights to which he is entitled under the Lanterman Act.

I declare under penalty of perjury, under the laws of the State of California, that foregoing is true and correct. Executed this 24th day of February, 2014, at Culver City, California.


WILLIAM PEEMAN

LINDA COTTERMAN, MSW, CLPF
COTTERMAN CONSERVATORSHIPS



Proud Member Since 2008

April 19, 2014

Re: Greg Demer, Case Number SP006273

To the Court:

I met Greg Demer in July 2009 and was court-appointed to serve as his Limited Conservator from August 2009 to November 2012. While serving as Greg's conservator for over three years, I got to know Greg quite well and understood his preferences, his ability to express himself, and his relationships with others. In my opinion Greg has always been able to make his wishes known, either by his limited verbal expression or by his behavior.

I can say these things with complete confidence based upon on my own observations and interactions with Greg. I also had frequent and lengthy conversations with his caregivers on a more-than-weekly basis.

Every week I would meet with Greg in his apartment to go over his next week's schedule. He could, and would, verbalize his wishes about his education classes, his part-time employment, his household chores, his visits with parents, and his social events, such as birthday parties, pizza parties, a pool lunch or BBQ dinner with friends. Greg would then put his preferences on his computerized weekly schedule and send via email to parents, caregivers, agency, and me. He expressed to me that he liked a girl, Nannette, and wanted to invite her for dinner, prepare the meal, and knew what food he wanted to serve. For his birthday parties, he would tell me 9 or 10 names of those he wanted to invite. He was very clear by giving me a firm "yes" or "no" if a name was mentioned. Each week he would tell me what he wanted to do on any given evening or weekend, or for that matter, during the weekdays. Sometimes Greg would come up with his own ideas, and sometimes the caregiver or I would give him ideas and options. Each time he

would give his preference. If an idea was something that Greg had never done before, he would not answer, and his body language would show a bit of anxiety. He had difficulty asking questions, yet I soon learned that Greg would pose a question in the form of a statement. For example, if his question was "What time?" or "How long?" he would say, "I will be ready to go to the gym at 10 o'clock for 5 hours." The longer he made the time, the more he liked that activity.

I found that all of Greg's preferences were reasonable, safe, and healthy. Greg always wanted to please others. If a caregiver or I would tell him a safety rule or suggest a healthy food, he would comply. Never once did Greg insist on doing something that was not reasonable, safe or healthy. In fact, he always wanted to be safe by locking doors, by using proper cleaning supplies, by personal bathing/grooming, and he was slightly obsessive in caring for his personal belongings. Greg is more of a "neat freak." The only unhealthy activity that occurs to me is that Greg liked to eat. He could eat a whole large pizza and five pieces of cake if allowed.

Greg had a liking for a girl about his own age who had a disability and with whom he had attended school and had known for many years. He would sit with his arm around her and gave her a couple of cheek kisses. When I told him that I thought Nannette was "cute," he responded with a gusto, "Yea!" However, Nannette told Greg that she only wanted to be a friend, not a girlfriend. He very appropriately respected her wishes. I have never been aware of any sexual relationships. Sexual activity has never been a problem.

As far as Greg's visitations with his parents are concerned, it was very apparent to those who knew Greg well that he loved visiting his mother and did not want to visit his father. Of his own free will, he would call his mother and invite himself to her home on Saturdays and other days. He would express his wishes for his mom to take him shopping, to host his birthday parties, or to come with him to medical appointments. When he had a cold, he would tell me to call his mom saying "Mom will know what to give me." When he received an award at the EmpowerTech ceremony, he wanted to make sure his mother, the caregiver, and I were coming. He would call his mother often, sometimes daily, to tell her what was on his mind.

Visits with his father were of a different nature. Each week when I would visit Greg to make his next week's schedule, he would emphatically state that

he didn't want to see his dad and that he didn't want to go to church with his dad and Melissa. He wanted to go to the airport and work on the planes. I want to go to IHOP with my friends, then to the thrift store, and eat at Burger King for lunch." It was difficult for me and the caregivers to convince him otherwise. This reluctance to see his father was a problem since the 2009 Settlement Agreement between his parents stated that his father could have visits with Greg one day per week. The only way to convince Greg to go with his father was to arrange, or have Greg request something that he really wanted to do, such as dinner at Spitfire Grill, rake father's yard to earn jet T-shirts, or go flying in father's airplane to Catalina or Santa Barbara. On occasion Greg would return to his apartment mad at his father and report that he didn't get to go to Spitfire Grill because he didn't have his own money. After three to four months of raking leaves Greg would report that the jet shirts still didn't arrive in the mail yet. There were times when Greg would return home, go into his bedroom, slam the door and yell that there is a bad man outside his door and for the bad man to go away and that he never wanted to see the bad man again. Other times, Greg would run out the patio door when his Dad would knock on his front door. He did not want his dad to find him. Greg sometimes would return home after visits and give his "yogi" yell, which is what he would do when he was angry and could not express himself in words. The caregivers would then take him to the exercise room and Greg would "work it off." Greg would also want to do his laundry or vacuum after or during upsetting times. I have never known the caregivers or me to promote Greg's objections to his fathers' visits. In fact, it was quite the opposite. We were always trying to convince Greg to visit with his father because of the 2009 Settlement Agreement.

In my opinion, Greg's objections to his fathers' visits came from his own mind. Are they reasonable? Yes, I believe so. I have known Greg's father to be a threatening, intimidating "bully." He has threatened me, as Greg's conservator, on numerous occasions through his court litigation against me. He threatened my professional fiduciary license by sending out a petition to have my professional license revoked. Three times he filed a petition in court for my removal as Greg's Limited Conservator. The third time, he got his wish and I was removed. I have heard that Joe Demer has brought legal action, not only against me, but also against the Westside Regional Center and Greg's mother. He has brought intimidating actions in a legal context to the UCLA Seeds Elementary School, the Independence Center, MyLife Foundation, and two fine attorneys in our area. He would verbally threaten

and intimidate Greg's caregivers and the caregiving agency and personally served them with subpoenas. Many of the caregivers were afraid to interact with Greg's father and with good reason. I thought that even the court and attorneys were reacting to Greg's father in such a way, so as not to upset him because it would lead to more court petitions, litigation, trials, and appeals.

Were the fathers' visits threatening to Greg? Yes, I believe so. Greg would report that his father would take away his cell phone during visits and not let Greg call his friends or anyone else during the day long visits. Greg's father would seldom tell anyone what, or where, Greg was going to do that day. Then he would accuse Greg and the caregivers of not being dressed appropriately or not wearing the right shoes. There was one incident when his father, unannounced, picked up Greg in a parking lot without informing the nearby caregiver. Then he later accused the caregiver of not watching Greg properly. He would not allow the caregivers to accompany Greg on visits saying it was a "court order." Many of the promises he made to Greg were not kept. I remember the time when Greg did not want to go to Phoenix with his dad and refused to pack his bag. His father then promised him a flight on a Boeing 737. Greg discovered on the way to the airport that they were traveling in his father's small plane and not in the 737 jet as his dad had promised. Are Greg's preferences to **not** want to visit with his father reasonable? Yes, I believe so. Greg's preferences are very normal and very reasonable.

In my opinion, Greg expresses his social preferences very adequately and should retain the right to make his own social decisions.

Feel free to contact me if you have any questions or want further information or documentation.

Sincerely,



Linda Cotterman

2126 PATRICIA AVE • LOS ANGELES, CA • 90025
PHONE: 310-927-3553 • FAX: 310-475-4143
LINDACOTTERMAN@GMAIL.COM

To: Hon. Daniel S. Murphy
Hon. David Cunningham
Department 29
Los Angeles Superior Court

RECEIVED

From: Thomas F. Coleman
2100 Sawtelle St. #204
Los Angeles, CA 90025
(818) 482-4485

APR 18 2014

PROBATE DEPT.
DEPT. 29

Re: Conservatorship of Gregory D.
Case No. SP 006273
Letter of Concern (rule 7.10(c), California Rules of Court)

Date: April 16, 2014

I am writing this letter to create a record regarding the performance of the court-appointed attorney for the limited conservatee in this case.

If Gregory had the knowledge or the ability, he might very well ask for another attorney. He might ask for a "Marsden" hearing at which he could argue that his current attorney is not advocating for his wishes and is not defending his constitutional rights to freedom of speech and freedom of association. He might argue that he is not receiving effective assistance of counsel. (*In re David L.* (2008) 164 Cal.App.4th 701; *People v. Hill* (2013) 219 Cal.App.4th 646). But Gregory will not be doing this because his developmental disability puts him at a disadvantage to other litigants in this case who are capable of complaining.

If Gregory could complain, he would likely bring to the court's attention the fact that his attorney has received several letters from people who know him well, and for many years, in support of his right to make his own social decisions. He would probably complain that his attorney is not bringing these letters to the court's attention or otherwise using these witnesses as a strong rationale for objecting to the conservators' petition to diminish Gregory's right to exclusively make his own social decisions.

Of course, since it is the court that appointed this attorney to represent Gregory, the court can always conduct a Marsden inquiry, outside of the presence of the other parties, on its own motion. A sua sponte inquiry would be appropriate when a litigant has a developmental disability and therefore cannot raise the issue of ineffective assistance of counsel himself. A meaningful Marsden hearing would require the appointment of a temporary guardian ad litem, for the sole purpose of that hearing, so that Gregory would have an effective advocate to critique the performance of Gregory's attorney.

I am attaching the letters of support – which I personally sent to Ms. Maillian some time ago – to create a record with the court in the event there is ever an appeal (perhaps a "next friend" appeal) or a writ proceeding to challenge any order of the court on the ground of ineffective assistance of counsel. Otherwise, alleged out-of-court ineffective assistance might go undocumented.



ST. BEDE'S PARISH

The Episcopal Church in Mar Vista, Venice, Ocean Park & Playa Vista
3590 Grand View Boulevard, Los Angeles, CA 90066-1904
310-391-5522 • stbedesla@yahoo.com • http: www.stbedesla.org

The Very Rev. Canon James A. Newman II, A/OHC, Rector

Frank Basile, Music Director
Michael Gallagher & Kathy Fairchild, Vergers
Jerry Hornof, Sr. Warden

Thomas Ledsam, Facilities Manager
Rea Crane, Head Sacristan
Alice Short, Jr. Warden

April 7, 2014:

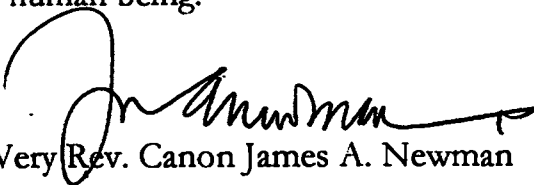
To: Los Angeles Superior Court
Re: Greg Demer, Case # SP006273

I am the Rector of St. Bede's Episcopal Church in Los Angeles (Mar Vista) and have known the Demer family since 1990, that is I have known Greg since he was around three years old. Greg has been involved in church frequently while a child and later periodically in social events. For several years, St. Bede's was one of the sites at which Greg worked through a program at Venice High School to help acquire skills for "special needs" young people.

Let me be clear that I am not taking sides in any discussion about which family members Greg should/may spend time with. I think that he needs to be able to express his wishes in this and other areas. As a former teacher, I understand that autism has nothing to do with intelligence. While Greg's handicap may lead him to both process information and communicate in different ways, I am sure that Greg's progress over the years that I have known him has been due in part to the mentoring he has received and the freedom he had been allowed to express in his choices.

I have not known Greg to have made poor choices or to associate with undesirable people. Indeed, the space given to Greg has allowed him to build on his interests in aircraft and to establish appropriate relationships with people.

I would hope that the court would use its power to continue to give Greg as much latitude in his decision making as possible. I would personally hope that Greg have relationships with all members of his family – but that those relationships be of his own choice. To limit his freedoms in such basic decisions as this is to offer him less of a range of hope which is so essential to every human being.



The Very Rev. Canon James A. Newman
Rector

April 5, 2014

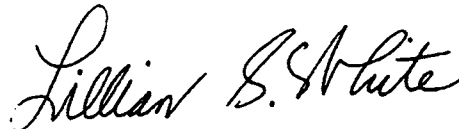
In the matter of Greg Demer

To whom it may concern:

I am a recently retired Special Education teacher having worked many years at Venice High School. During my tenure there as teacher and Special Ed. Coordinator, I have had the opportunity to work with Greg Demer and participated in numerous IEP meetings to determine a program that would best meet his particular needs. I have observed him in many situations both within the school setting and without and found him to be able to clearly articulate his needs and desires.

While an individual with developmental disabilities, they do not preclude his ability to make his opinions known. He is able to determine for himself and express clearly his preferences for participating in particular social settings. These should be respected. Even though he is still in need of guidance and supervision he definitely knows what he wants and doesn't want. It is my firm belief that Greg should be able to exercise the right to determine for himself the individuals with whom he wishes to interact. He should be allowed the freedom to express his needs and desires and his wishes should be respected to the degree that there is no harm to himself or others. The conservators should be respectful of Greg's opinions and should be directed to act accordingly whenever possible.

Lillian S. White

A handwritten signature in cursive script that reads "Lillian S. White".

Venice, CA 90291

April 6, 2014

Los Angeles Superior Court

Re: Greg Demer, Case Number SP006273

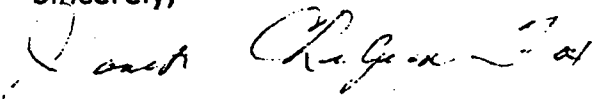
To the Court;

I'm writing this letter in support of Mr. Demer. I have known Greg since he was a child. I have watched his growth through the years, and I find him a caring, loving and courteous young man.

I've seen Greg at work at the "Spitfire" restaurant at the Santa Monica Airport, and he has volunteered at the church I attend doing office work. He has done this volunteer work for many years.

Finally, I feel that taking over his social rights, controlling his decisions of how to spend his free time and with whom, very disagreeable. Greg needs freedom to live his life without extraordinary controls.

Sincerely,



Janet Chiljian Fox

-2308

April 3, 2014

Los Angeles Superior Court

Re: Greg Demer, Case Number SP006273

To the Court:

Greg Demer is part of the new generation of adults with Autism in the US. As the rate of autism continues to climb among US children, now 1 in 68, it is imperative to find efficient methods that allow autistic individuals to become self-sustaining adults without being tangled in webs of legal proceedings. This growing epidemic means that Greg's case could set the precedent for how thousands of autistic people are treated in the future as they attempt to be successful and contributing members to society.

In order to be a contributing member to society one needs to be taken seriously as a member of society. This means not undermining the rights of autistic people- in Greg's case, the court's ruling that he must reconnect with his father. I have known Greg for 13 years and in the time that I have spent with him- and one wouldn't need much time to understand this, it has been made abundantly clear that he is an honest and caring person. Of course Greg requires support staff but that does not mean he is not a sentient being. Greg (just like many other people) does not hold back from expressing himself; his likes, his dislikes, what makes him nervous, and many more insightful quirks that tell you who he is. You'll find out that he has quite an aversion to being late, changing routines (Greg lost 40 pounds in one month when he was removed from MyLife Foundation and received new support staff), and to making errors in general. You'll easily learn about his love for aviation- I'm sure he'll happily fill you in on any fighter planes if you ask and he could talk for days about them as his eyes light up with wonder and excitement. You'll also discover that his father is never one of his favorite topics of conversation- and when he does speak about his father, there is much worry and fear in Greg's voice and overall demeanor. This is not a result of others pressuring Greg to feel fear towards his father, which is virtually impossible for an autistic person to fake, but because the father has simply earned a place in Greg's mind as a stressful stimulus.

Greg doesn't wish to hurt or neglect anyone; he just wants to lead *his* own life and surround himself with the people *he* likes. Greg is a very caring and endearing to those *he* chooses to associate with. Those who are "acting in Greg's best interest" should pay more attention to what Greg is saying and less to court processes and formalities. Greg's wellbeing needs to be of chief concern and his feelings need to be respected.

In keeping with his honesty, he doesn't mask his emotions when speaking about his passions, and about what makes him nervous, and what causes him deep angst. As with any person, we have our likes and our dislikes, and Greg is no different. To think otherwise would be feeble-minded and completely dismissive.

Sincerely,



Matthew Bertoni

2100 Sawtelle
#304 90055

CERTIFIED MAIL™



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APR 18 2014

PROBATE DEPT.
DEPT. 29

Superior Court
Department 29 Judge
111 N. Hill Street
Los Angeles, CA 90012

8/2/10

90012311554



Spectrum Institute

Disability and Abuse Project

February 21, 2014

Hon. Daniel S. Murphy
Hon. David Cunningham
Department 29 – Superior Court
111 N. Hill Street
Los Angeles, CA 90012

Re: Conservatorship of the Person of Gregory D., SP006273
Letter of Concern (Rule 7.10 (c), California Rules of Court)

To the Court:

I am writing out of concern that the constitutional rights of Gregory D., a limited conservatee under the protection of this court, are not being adequately defended or protected.

Any resident of the United States has constitutional rights to freedom of speech and freedom of association. These rights are guaranteed by the Bill of Rights, as made applicable to the states through the Fourteenth Amendment to the United States Constitution. They are also guaranteed by the California Constitution. Article I, section 1, of the California Constitution protects liberty as well as the right of individuals to pursue happiness and privacy. Article I, section 2 protects freedom of speech.

The co-conservators, by petitioning the court to take Gregory's right to make social decisions from him and to grant such authority to them, are seeking to restrict Gregory's constitutional rights. The father, who would benefit from such an order, is not objecting to the petition.

It is unknown whether Gregory's court-appointed attorney will oppose this petition, and whether she will vigorously defend Gregory's constitutional right to make his own social decisions, to choose not to associate with anyone on any given occasion, and not to be a "captive audience" and a "forced listener" during any unwanted visits.

As of this date, I am unaware of any pleadings filed by the current PVP attorney in opposition to the petition on social rights or any arguments advanced by her regarding Gregory's constitutional rights and why he should never be required to visit with anyone if he does not want to. I have sent emails and a considerable amount of legal information to the PVP attorney on these constitutional issues and have offered to brainstorm with her but she has not reached out to me. I am concerned that she has become an advocate for what she considers the best interests of Gregory. If Gregory's attorney is not arguing for his wishes, then he really is not receiving effective assistance of counsel. A "Marsden" hearing is appropriate if a conservatee's right to counsel is compromised. (People v. Hill, Fourth District Court of Appeal, E054823, 9-11-13.)

2100 Sawtelle Blvd., Suite 204, Los Angeles, CA 90025 • (818) 230-5156
www.disabilityandabuse.org • tomcoleman@earthlink.net

I call the court's attention to three documents: (1) Declaration of William Freeman for the Regional Center; (2) Probate Investigator's Report from 2013; and (3) Reporter's Transcript from the proceeding on October 4, 2013.

Document #1 – Declaration of William Feeman in Objection to Petition for Authority to Control Limited Conservatee's Social and Sexual Contacts and Relationships – is 2 pages long. This document was filed in response to the conservators' request to take control away from Greg over his social decision making. The Assistant Director of Westside Regional Center says that: (1) Gregory should be able to make his own choices about who he spends time with; (2) Gregory has never demonstrated behavioral issues which would justify termination of his right to make his own such choices; (3) Gregory has demonstrated an ability to create a rich social and work life; and (4) It would be sad if Gregory's social rights are taken away "simply to satisfy his parent's and conservators' need to control his social life."

Document #2 – Original Probate Investigator's Annual or Biennial Review Report – is 8 pages long. In this report, the Probate Investigator states that: (1) Gregory knows what he wants and that is to see less of his father; (2) The caregiver where Gregory lives says Gregory is intelligent and that the father is controlling; (3) the co-conservators have not attempted to develop a relationship with Gregory; and (4) The original PVP attorney for Gregory is not effectively advocating for him. The report recommends: (1) That the co-conservators be removed; and (2) a PVP attorney be appointed to advocate for Gregory's desire to have less visitation with his father.

Document #3 – Reporter's Transcript of Proceedings on October 4, 2013. On page 17 of this document, Gregory states in open court, in no uncertain terms, that he does not want to visit or be with his father. This document is attached to the letter of Nora J. Baladerian, Ph.D..

As the court is aware, the statutory scheme for limited conservatorships assumes that the proposed limited conservatee will be allowed to retain as many rights as possible and should be encouraged to live a life as independently as possible. (Conservator's Handbook, Judicial Council, p. 19) The conservator does not have authority to make social decisions for the conservatee unless a judge orders this. (Conservator's Handbook, Judicial council, p. 20)

While a conservator may seek to transfer authority from the proposed conservatee to the conservator, the conservator, as the moving party, has the burden of proof since the conservator is seeking to overcome the presumption that the conservatee should retain this right.

Because fundamental constitutional rights are involved in a transfer of authority to make social decisions from a conservatee to a conservator, the burden of proof should be heavy. The conservatee has a right of privacy – a right to be left alone. This right is infringed when he is pressured to leave his home and to go with a parent somewhere against his will.

The conservatee's freedom of association is infringed when a court order, or directives from a conservator (state appointed agent) pressures him to visit with a parent when he does not want to or under circumstances that he does not favor. The United States Constitution protects the freedom of choice in highly personal matters, including family relationships.

“[I]t is clear that among the decisions that an individual may make without unjustified government interference are personal decisions relating to marriage, procreation, contraception, family relationships, and child rearing and education.” *Carey v. Population Services International*, 431 U.S. 678, 684-85 (1977). Gregory has a constitutional right to decide which family members to associate with and which ones to avoid.

The freedom of association presumes a freedom not to associate with someone. “Freedom of association . . . plainly presupposes a freedom not to associate.” Justice Brennan, writing for the majority in *Roberts v. United States Jaycees* 468 U.S. 609, 622 (1984). As an adult citizen of the United States, Gregory has a federal constitutional right not to associate with his father.

A court order, or a conservator’s command, for a conservatee to go with or be with a visitor they do not want to be with, makes the conservatee a “captive audience” and forces them to listen to things the visitor says to them. This type of recurring “forced listening” for hours on end, and on repeated or scheduled occasions, violates the First Amendment rights of conservatees who are, in effect, being compelled by the government to listen to speech they do not want to hear and to associate with someone they do not want to be with. (Caroline Mala Corbin, “The First Amendment Right Against Compelled Listening,” 89 Boston University Law Review 939 (2009) <http://128.197.26.3/law/central/jd/organizations/journals/bulr/volume89n3/documents/CORBIN.pdf>)

Pressure, whether social or legal, is not permissible if it is instigated by the state and implicates First Amendment freedoms of an audience who cannot voluntarily leave to avoid the message. (*Lee v. Weisman*, 505 U.S. 577 (1992).) The current court order for scheduled visits, and the current methods of implementing the order, force Gregory to go with his father to places chosen solely by the father and to listen to and see visual and audio content that Gregory may not want to see or hear. This order and its implementation are tantamount to government compelled speech and association and therefore violate Gregory’s First Amendment rights. (David B. Gabler, “First Amendment Protection Against Government Compelled Expression and Association,” 23 Boston College Law Review 995 (1982))

The court should be very reluctant to give the co-conservators authority to make social decisions for Gregory, absent a showing that Gregory has made social decisions in the past that have harmed him or others. If the court does grant the petition, language should be included in the order that prohibits the conservators from ordering or directing or pressuring Gregory to visit with his father if, on any specific occasion, he does not want to. It should also be made clear that if Gregory voluntarily goes with his father, he should have the right to terminate such a visit at any time and should be returned, as soon as possible, to his home.

Finally, this is not about the father’s constitutional or statutory rights. The father’s right to make social decisions for his son ended when Gregory turned 18. This is about Gregory’s rights, and about people respecting the social decisions that he makes for himself.

Respectfully submitted,



Thomas F. Coleman
Legal Director

Nora J. Baladerian, Ph.D.

2100 Sawtelle Blvd., #204, Los Angeles, CA 90025 • (310) 473-6768
www.norabaladerian.com • nora.baladerian@verizon.net

February 21, 2014

Hon. Daniel S. Murphy
Hon. David Cunningham
Department 29 – Superior Court
111 N. Hill Street
Los Angeles, CA 90012

Re: Conservatorship of the Person of Gregory D., SP006273
Letter of Concern (Rule 7.10 (c), California Rules of Court)

To the Court:

I am writing to share my concerns about the petition of the co-conservators to have the court enter an order taking away the right of Gregory D. to make his own social decisions and instead to grant the co-conservators the authority to make such decisions for him. I have serious concerns about the damage that could be caused to Gregory if such a request is granted, especially if an order restricting Gregory's right to make social decisions does not contain specific limitations on the authority of the co-conservators with respect to any social decisions they may make for Gregory.

This letter is being submitted pursuant to subdivision (c) of Rule 7.10 of the California Rules of Court. That provision allows a judicial officer to receive an ex parte communication from a person regarding a conservatee in an open proceeding. The court may take appropriate action in response to the communication, including setting a hearing to address the issues raised in the communication.

I am a licensed clinical psychologist in California and have been for several decades. Most of my professional work involves providing therapy for children and adults with developmental disabilities, as well as conducting research, education, training, and forensic consulting on issues involving abuse of people with developmental disabilities, including autism. You can learn more about my work, and about my credentials, at my professional website: www.norabaladerian.com. I also devote considerable time to these issues, pro bono, and you can find additional information about this nonprofit work at: www.disabilityandabuse.org.

I became aware of this case last year when I learned about the decision of the Court of Appeal denying parents standing to appeal from a trial court decision that infringed on the constitutional rights of an adult child. I wrote a letter to the California Supreme Court in support of the appellant's petition for review. I have been monitoring this case ever since.

After the case was returned by the appellate court to the Probate Court, I attended a hearing in the case on October 4, 2013. At that hearing, I witnessed an amazing spectacle. Gregory stepped forward and addressed the court and expressed his wishes with respect to the issue of visitation with his father. The fact that he initiated the presentation was amazing in and of itself, considering the limitations experienced by people with autism. But the clarity of his remarks and the deliberate focus of his presentation was even more amazing. I am attaching a copy of page 17 of the reporter's transcript for that proceeding, the page on which Gregory's remarks appear.

Gregory stated, and reiterated, in several different ways, that he did not want to see or be with his father. Gregory could not have been more clear about his wishes. What surprises me, however,

is that his court-appointed attorney did not follow up by making a motion to eliminate the order creating a schedule of visits, or seek a protective order clarifying that Gregory has a continuing right to veto any proposed visit with his father. Perhaps the attorney is engaging in "best interests" advocacy rather than "client's wishes" advocacy. But if that is the case, then Gregory has been left without an attorney to advocate for what he wants.

It appears that the co-conservators believe that Gregory lacks the capacity to make social decisions. The argument seems to be based on the notion that a person must be able to make well informed decisions in order to have a capacity for social decision making. Such an argument overstates the role of intelligence and cognitive judgments in social decisions.

We are not talking about the capacity for entering into contracts, making medical decisions, engaging in sexual relations, or whether someone will marry or not. These are more difficult decisions and ones that may have consequences, not only to the conservatee, but to others, as well as to society. In contrast, a decision to visit someone or not, or to engage in conversation with them, or to participate in recreational activities with them, is quite a different matter.

Social decisions, such as these, are premised largely on subjective emotional choices. They are usually determined by likes and dislikes. An adult with autism knows whether he likes cartoons or cowboy movies or not. He knows whether he likes to walk in the park or go bowling or not. He knows whether he feels good or bad when he is in the presence of a particular person. He is the definitive expert when it comes to his own feelings, his likes and dislikes. It takes very little to have the capacity to make such choices.

Many adults have mixed feelings when it comes to one or both of their parents. These feelings may be based on experiences from childhood or adolescence. They may both love and hate a particular parent. The dominant feeling – love versus hate – may fluctuate or change from day to day or week to week. The person may schedule a visit with a parent for a particular date in the future, but when that date arrives or is about to arrive, they may change their mind, based on their current feeling. Adults in the generic population have a right to have mixed feelings. They have a right to schedule a visit, only to cancel at the last minute. They may even start a visit, only to decide, half way through, that they want to terminate the visit. If someone forced them to visit against their will, or stopped them from leaving midway through a visit, the person doing the forcing or the stopping could be prosecuted for false imprisonment or kidnaping.

Imagine the feeling, and emotional harm, done to a victim of such false imprisonment or kidnaping. Imagine how the harm would be amplified if it were done repeatedly, on a regular schedule. Imagine the despair if the victim knew that others were aware of the emotional trauma they were experiencing and did nothing to help them. Worse yet, imagine the mental distress to the victim if they knew that someone participated in a scheme to force such unwanted associations on them.

This is what occurs when one parent is prohibited from protecting an adult child from forced or pressured visitations and the adult child does not understand why that parent is not stopping the process from happening. This is what occurs when a court allows, or even orders, people "in authority" to require or pressure an adult into visiting with someone against their will. It is quite likely that the adult who is manipulated into such forced visitations must feel abandoned by the parent or victimized by the judge who is supposed to be there to protect them from abuse.

Adults with developmental disabilities are supposed to be encouraged to live as independently as possible. They are supposed to retain as many rights as possible. Of course, if there is clear evidence that they have harmed themselves by making rash or bad decisions, and that a protective order is necessary to prevent harm to them or to others, then their rights may be curtailed.

There is no evidence that I am aware of that Gregory has made social decisions that have caused

harm to himself or to others. In contrast, he has made decisions to protect himself from emotional harm. For example, he has sometimes decided not to be at home when his father was scheduled to pick him up. That is a rational decision to prevent emotional harm to himself. He has also, on occasion, verbally expressed his refusal to go with his father for a scheduled visit. Again, this is his way of protecting himself. Such a decision causes no harm to anyone.

I am very concerned about the psychological harm that may be done to Gregory by: (1) learning that the court does not trust his ability to make social decisions; (2) knowing that the co-conservators have created a schedule of visits between Gregory and his father; and (3) being forced or pressured to be with his father, and listen to his father's communications for hours on end, on occasions when he does not want to do so. Item #1 could cause serious damage to Gregory's self esteem. Item #2 has already put Gregory under stress and has likely caused trauma as dates for scheduled visits got closer. Item #3 may have felt like torture, almost like a person in captivity being forced to listen to propaganda for hours at a time. This should not continue.

I am concerned that the co-conservators and their attorney, and the PVP attorney as well, are not understanding the gravity of the situation involved in stripping a high functioning adult on the Spectrum of his right to make social decisions. Hopefully, the court, in its role as ultimate defender of constitutional rights, will give this matter the careful attention that it deserves.


The decision of this court will not only affect Gregory, but will create a precedent in Department 29 that will affect other adults with developmental disabilities in future cases. Because the court's decision implicates fundamental constitutional rights of an extremely vulnerable litigant – one who has no control over whether his own attorney is effective or not – the court should require the moving party to show clear and convincing evidence that a restriction of Gregory's social rights serves a compelling state interest and is the least restrictive means of serving such an interest.

At this point in time, it appears that the power of the court is being employed to serve a private interest – the desire of a father to make a son visit with him. The co-conservators have also argued that the preservation of money and court time would be served by an order stripping Gregory of his right to make social decisions. They seem to blame the mother for the endless litigation around visitation. However, from what I have seen in the court records, the mother has said that she does not need or want a court order on visitation. She does not need a schedule. She is happy to allow Gregory to make his own decisions, on an ad hoc basis, as to whether to visit with her or the father. So the endless litigation seems to be caused by the father's never-ending demands to have the power of the court, or of the co-conservators, used to pressure Gregory into visiting him.

This entire matter could be resolved by simply allowing Gregory to do what comes naturally to him, and to any adult child, namely, to decide for himself, on a case by case basis, whether to visit with his mother or his father or anyone else for that matter. If the father wants to invite Gregory to visit with him, the father can email Gregory with a request to visit. Gregory can reply by email and say yes or no, and his decision should be respected as final for that occasion. Gregory can always initiate a request to visit with his father by sending an email. This is really a matter of ordinary social decision making – one in which the conservatee should always be in control.

I am willing to make myself available to the court, should the court have any questions pertaining to anything I have said in this letter. I would just need advance notice so that I can arrange my schedule accordingly.

Respectfully,


Nora J. Baladerian, Ph.D.

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

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.

1 Paul T. Gaulke, Esq. [SBN 82089]
2 Duncan P. Hromadka [SBN 254529]
3 HROMADKA & GAULKE
4 11661 San Vicente Blvd., Ste. 410
5 Los Angeles, CA 90049-5112
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19 Court Appointed Counsel for
20 GREGORY R. DEMER, Limited Conservatee

RECEIVED
NOV 16 2011
DEPT. 50

FILED
LOS ANGELES SUPERIOR COURT

NOV 18 2011

BY JOHN ALLEN CLARKE, CLERK
INGRID FLORES, DEPUTY

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES - WEST DISTRICT

11 In the Matter of the Limited Conservatorship)
12 of)

13 GREGORY R. DEMER,)

14 Limited Conservatee.)
15)
16)
17)
18)

CASE NO. SP006273

**ORDER ON PETITION FOR
INSTRUCTIONS RE ADMINISTRATION
OF THE LIMITED CONSERVATORSHIP
OF THE PERSON OF GREGORY R.
DEMER, LIMITED CONSERVATEE**

Hearing:

Date: 11/7/11
Time: 8:30 AM
Dept: O

19 The Petition for Instructions re Administration of the Limited Conservatorship of the
20 Person of Gregory R. Demer, Limited Conservatee, filed by Court Appointed Counsel for the
21 Limited Conservatee, Paul T. Gaulke, Esq. ("PVP Attorney"), came on regularly for hearing on
22 November 7, 2011 at 8:30 a.m. in Department WE-"O" of the above entitled court located at 1725
23 Main Street, Santa Monica, California 90401, the Honorable John L. Segal, Judge presiding.
24 Present at the hearing were one of the two proposed Successor Co-Conservators, Bruce Hitchman,
25 represented by Cynthia R. Pollock; Paul T. Gaulke, of the Offices of Hromadka & Gaulke,
26 representing the Conservatee Gregory R. Demer (the "Conservatee"), who was also present; Linda
27 L. Demer, M.D. Ph.D., mother of the Conservatee, represented by Daniel D. Rodarte; and Joseph
28 L. Demer M.D. Ph.D., father of the Conservatee and Petitioner in Pro Per. Also present at the

1 c. The third weekend, Saturday and Sunday only, shall be designated to Linda
2 L. Demer, M.D., Ph.D., in which Linda L. Demer, M.D., Ph.D. shall have ~~sole and complete~~
3 control of decision-making on how that weekend visitation, if any, will be spent with the Limited
4 Conservatee Gregory R. Demer. The Limited Conservatee, Gregory R. Demer, may elect an
5 overnight stay with Linda L. Demer, M.D., Ph.D.'s at Linda L. Demer, M.D., Ph.D.'s home or
6 elsewhere;

7 d. Upon the conclusion of the third week, the rotation of visitation shall
8 commence again, beginning with the Limited Conservatee Gregory R. Demer's personal
9 weekend, followed by Joseph L. Demer, M.D., Ph.D.'s weekend, and concluding with Linda L.
10 Demer, M.D., Ph.D.'s weekend, and such visitation designation shall remain ongoing until
11 ordered otherwise by the Court;

12 4. The Limited Conservatee Gregory R. Demer's ~~continuing~~ reunification therapy
13 with Bruce M. Gale, Ph.D. is ^{discontinued} ~~denied~~ without prejudice;

14 5. All costs of living, pertaining to the Limited Conservatee, including but not limited
15 to housing, utilities, clothing, food, and care not paid for by a government or public agency, shall
16 be borne equally by the Limited Conservatee Gregory R. Demer's parents, namely Joseph L.
17 Demer, M.D., Ph.D. and Linda L. Demer, M.D., Ph.D.

18 6. All records, pertaining to the Limited Conservatee Gregory R. Demer, including
19 but not limited to medical, financial, and personal, shall be furnished by the Successor Co-
20 Conservators to the parents of the Limited Conservatee Gregory R. Demer, namely Joseph L.
21 Demer, M.D., Ph.D. and Linda L. Demer, M.D., Ph.D., pursuant to the terms of the July 2, 2009
22 Order of this Court;

23 7. All notices, pertaining to the administration of the Limited Conservatorship of the
24 Person of Gregory R. Demer, by the Successor Co-Conservators shall be made in accordance with
25 the terms of the July 2, 2009 Order of this Court.

26 8. The provisions of this Order shall supercede previous Orders entered by this Court,
27 concerning the issues set forth herein.

28 9. Thomas E. Beltran, Esq. shall remain as Court Appointed Evidence Code Section

1 hearing was the Court appointed Evidence Code Section 730 expert, Thomas E. Beltran of the
2 Law Offices of Thomas E. Beltran.

3 The Court having found that proper notice of the time and place of the hearing has been
4 given as required by law, and after reviewing and having heard the evidence presented by the
5 parties,

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

7 1. The Successor Co-Conservators of the Limited Conservatorship of the Person of
8 Gregory R. Demer are to comply with the July 2, 2009 Order with respect to the removal of My
9 Life Foundation as a vendor and care service provider for the Limited Conservatee Gregory R.
10 Demer;

11 2. The Successor Co-Conservators of the Limited Conservatorship of the Person of
12 Gregory R. Demer shall retain a successor supported living services vendor for the Limited
13 Conservatee Gregory R. Demer, specifically a supported living services vendor that has not
14 previously cared for the Limited Conservatee, including personal care individuals, within sixty
15 (60) days from the issuance of Letters of Administration to the Successor Co-Conservators;

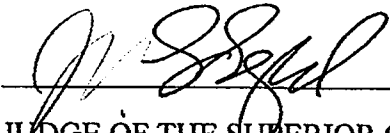
16 3 The parents of the Limited Conservatee Gregory R. Demer, namely Joseph L.
17 Demer, M.D., Ph.D. and Linda L. Demer, M.D., Ph.D., shall have a designated visitation schedule
18 with the Limited Conservatee Gregory R. Demer, commencing at the time that Letters of
19 Administration are issued to the Successor Co-Conservators as follows:

20 a. The first weekend, Saturday and Sunday only, shall be designated to the
21 Limited Conservatee Gregory R. Demer, in which he shall have ~~sole and complete~~ control of
22 decision-making on how that weekend shall be spent by him;

23 b. The second weekend, Saturday and Sunday only, shall be designated to
24 Joseph L. Demer, M.D., Ph.D., in which Joseph L. Demer, M.D., Ph.D. shall have ~~sole and~~
25 ~~complete~~ control of decision-making on how that weekend visitation, if any, will be spent with
26 the Limited Conservatee Gregory R. Demer. The Limited Conservatee, Gregory R. Demer, may
27 elect an overnight stay with Joseph L. Demer, M.D., Ph.D.'s at Joseph L. Demer, M.D., Ph.D.'s
28 home or elsewhere;

1 730 expert for sixty (60) days from the date Letters of Administration are issued to the Successor
2 Co-Conservators of the Limited Conservatorship of the Person of Gregory R. Demer to assist and
3 counsel the Successor Co-Conservators during this transition period. Upon the sixtieth day,
4 Thomas E. Beltran, Esq. shall be discharged, *with the Court's appreciation.*

5
6 Dated: 11/18/11


7 JUDGE OF THE SUPERIOR COURT
8 JOHN L. SEGAL

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1 **LAW OFFICE OF CYNTHIA R. POLLOCK**
2 Cynthia R. Pollock, State Bar No. 153298
3 Stephanie J. Unguez, State Bar No. 263366
4 Pier Plaza, Suite 101
5 109 West Torrance Boulevard
6 Redondo Beach California 90277

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

APR 17 2012

John A. Clarke, Executive Officer/Clerk
By: F. Hinojosa, Deputy

6 Attorney for Bruce Hitchman and Lee Ann Hitchman, Co-conservators

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF LOS ANGELES

10 In re the Matter of the Conservatorship
11 of the Person and Estate of

Case No. SP 006273

ORDER AFTER HEARING ON PETITION
TO CLARIFY FEBRUARY 24, 2012
ORDER

12 GREGORY DEMER,

13
14 Conservatee

Date: March 9, 2012

Time: 8:30 a.m.

Dept.: N

Judge: The Honorable Craig D. Karlan

17 PLEASE TAKE NOTICE that on Friday, March 9, 2012 at 9:00 a.m., in the above-
18 referenced matter was duly called for hearing, by the Honorable Craig D. Karlan, Judge, in
19 Department N of the Los Angeles County Superior Court, Northwest Branch.

20 The appearances were as follows: Jeffrey A. Kiburtz, Esq., Shapiro, Rodarte & Forman
21 LLP, for the applicant and nonparty, My Life Foundation. Paul T. Gaulke, Esq., PVP attorney
22 for Gregory Demer, Cynthia R. Pollock, Esq. For Limited Co-Conservators of the Person of
23 Gregory Demer, Daniel D. Rodarte, Esq., for and with Dr. Linda Demer, and Dr. Joseph Demer,
24 in pro per.

25 This ex parte petition was brought by counsel for My Life Foundation to clarify the order
26 rendered by the Court February 24, 2012. All of the above persons were also in attendance
27 February 24, 2012. The following persons attended the February 24, 2012 hearing, but were
28

1 unable to attend the March 9, 2012 hearing: Tim De Haven and Jim De Haven of My Life
2 Foundation, Bruce Hitchman, of Hitchman Fiduciaries, although both of these parties were
3 representation by counsel, and Thomas Beltran, Esq., Court appointed expert was also unable to
4 attend.

5 The Court requested that the orders from February 24, 2012 and March 9, 2012 be
6 consolidated into one order. Such matters are consolidated herein:

7 Good cause appearing, the Court orders the following:

8 IT IS ORDERED that:

9 ~~1.~~ ^{Dr. Demers} The father has a continued right to visit the Limited Conservatee, Gregory Demer at
10 8:30 a.m. on Sundays. As necessary, the Limited Conservatee's caregivers should utilize
11 prompting and redirection to assure that the Limited Conservatee is available, at his apartment, to
12 be picked-up by the parent with scheduled visitation for a particular day.

13 2. If the Limited Conservatee insists upon leaving his apartment prior to scheduled
14 visitation with a parent, the Limited Conservatee's caregivers should ~~then follow the Limited~~
15 ~~Conservatee and~~ advise the parent with scheduled visitation by cell phone, on an on-going basis,
16 of Limited Conservatee's location to allow and facilitate pick up.

17 3. ~~My Life Foundation will remain Gregory's vendor.~~ Reconsideration of My Life
18 Foundation as Gregory's vendor is to be stayed for sixty (60) days from the original hearing date
19 of February 24, 2012. During this time, Co-conservators or any other party have an opportunity
20 to file a petition to clarify, modify or amend the 2009 Order. Such petition shall not be filled ex
21 parte, but may be filed on shortened time as permitted by the Court. Such petition must be filed
22 no later than May 4, 2012. **DURING THIS STAY, MY LIFE FOUNDATION**
SHALL REMAIN GREGORY'S VENDOR.

23 4. The stay with respect to reconsideration of My Life Foundation as Gregory's vendor
24 will continue upon the filing of a petition to clarify, modify or amend the 2009 Order, until
25 further order of the Court. **AFTER HEARING ON THIS PETITION.**
IF NO PETITION IS FILED, THE 2009 ORDERS WITH RESPECT TO GREGORY'S
CAREGIVERS AND/OR MY LIFE FOUNDATION WILL REMAIN IN EFFECT AND THE CO-CONSERVATOR
SHALL HAVE 30 DAYS TO COMPLY THEREWITH.

26 5. Gregory is to be assessed by an appropriate psychiatrist/psychologist related solely to
27
28

1 the issue of the impact on Gregory if My Life Foundation is replaced by another vendor.
2 Selection of such professional shall be by the parents by mutual determination, provided
3 however, if the parents fail to agree by March 18, 2012, the appropriate psychiatrist/psychologist
4 will be chosen by Paul T. Gaulke, Esq. and Thomas Beltran, Esq. on March 19, 2012.

5 **GREGORY'S INTEREST(S) SHALL BE TAKEN INTO CONSIDERATION.**
6 **G. AS PER THE 2009 STIPULATION AND ORDER, CJK**
7 **APPROVED AS TO FORM AND CONTENT: "VIOLET" SHALL NOT BE**
8 **INVOLVED WITH GREGORY'S CARE.**

8 SHAPIRO, RODARTE & FORMAN, LLP HROMADKA & GAULKE CJK

10 By: _____
11 Jeffrey A. Kiburtz, Esquire
12 Attorney for My Life Foundation

10 By: _____
11 Paul T. Gaulke, Esquire
12 PVP Attorney for Gregory Demer


13 LAW OFFICE OF DANIEL D. RODARTE

13 DR. JOSEPH DEMER, FATHER

15 By: _____
16 Daniel D. Rodarte, Esquire
17 Attorney for Linda Demer

15 By: _____
16 Joseph Demer
17 In Pro Per

19 IT IS SO ORDERED:
20 4.17.12
21 Date

20 
21 THE HONORABLE CRAIG D. KARLAN
22 Los Angeles Superior Court Judge
23 **CRAIG D. KARLAN**

CONFORMED COPY
ORIGINAL FILED
 Superior Court of California
 County of Los Angeles

MAY 12 2014

Sherri R. Carter, Executive Officer/Clerk
 By: Suzanne Godfrey, Deputy

1 **LAW OFFICE OF CYNTHIA R. POLLOCK**
 Cynthia R. Pollock; SBN: 153298*
 2 Haroun R. Nabhan; SBN: 272273
 Certified Elder Law Attorney (CELA)*
 3 National Elder Law Foundation*
 109 West Torrance Boulevard, Suite 101
 4 Redondo Beach, California 90277

5
 6 ~~Attorneys for Lee Ann Hitchman and Bruce A. Hitchman,~~
 Limited Co-Conservators

7
 8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **COUNTY OF LOS ANGELES**

10
 11 **In the Matter of the Limited Conservatorship**
 12 **of the Person of:**

13 **GREGORY R. DEMER,**

14 **Limited Conservatee.**

Case No. SP006273

**ORDER ON AMENDED PETITION FOR
 AUTHORITY TO CONTROL LIMITED
 CONSERVATEE'S SOCIAL AND SEXUAL
 CONTACTS AND RELATIONSHIPS**

[Prob. C. §1801(d) and 2351.5]

Date: April 28, 2014

Time: 8:30 a.m.

Dept: 29

Judge: Daniel S. Murphy

15
 16
 17
 18 **Petitioners, Lee Ann H. Hitchman and Bruce A. Hitchman, as Limited Co-Conservators of the**
 19 **Person of Gregory R. Demer having filed their Amended Petition for Authority to Control Limited**
 20 **Conservatee's Social and Sexual Contacts and Relationships, and the matter coming on regularly for**
 21 **hearing on April 28, 2014, in Department 29 of the above-entitled Court, the Honorable Daniel S.**
 22 **Murphy, Los Angeles Superior Court Judge, presiding. Petitioner, Lee Ann Hitchman, appeared with**
 23 **her attorney, Cynthia R. Pollock, Esquire. Other appearances were as follows:**

24 **Gregory Demer**

Limited Conservatee

25 **LeAnne E. Maillian, Esquire**

PVP attorney for Gregory Demer

26 **Dr. Linda Demer**

Mother of Gregory Demer

27 **Dr. Joseph Demer**

Father of Gregory Demer

28 **Julie Ocheltree, Esquire**

Attorney for Regional Center

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Charlene Williams

Case Worker for Regional Center

Eric R. Adler, Esquire

**Co-Counsel for Lee Anne Hitchman
and Bruce Hitchman**

William Sias, Esquire

**Deputy County Counsel for Public
Guardian**

The Court issued a tentative ruling and, there were no objections thereto.

THE COURT FINDS that:

1. Notice of said hearing was given to all interested parties as prescribed by law.
2. Limited Conservatee is susceptible to coercion and undue influence.
3. Authorizing Limited Conservatee to make joint decisions with the Co-Conservators would unfairly put Conservatee in the middle of matters he lacks the maturity and ability to handle.
4. It is in the best interest of Limited Conservatee, Gregory Demer, to grant the Co-Conservators sole authority to make decisions regarding the Limited Conservatee's social and sexual contacts and relations.

THEREFORE IT IS ORDERED THAT:

1. Lee Ann Hitchman and Bruce A. Hitchman, as Limited Co-Conservators, are granted the sole authority to make decisions, regarding Gregory Demer's social and sexual contacts and relationships, pursuant to Probate Code §2351.5(b)(6);
2. Co-Conservators are to take into consideration prior visitation stipulations and orders; and

/// **DATED:** MAY 12 2014 DANIEL S. MURPHY

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Emails Sent to Gregory's Attorney by Thomas F. Coleman

After the case was sent back to the Superior Court from the Court of Appeal, the conservators asked the court to strip Gregory of his right to make social decisions and to transfer sole authority for such decisions to them. Gregory was then without an attorney because his former court-appointed lawyer was relieved as counsel after the court entered its order in April 2012 – the order that directed Gregory's caregivers to pressure him to remain at home when his father was scheduled to pick him up for court-ordered visits.

Gregory wrote a note to the judge asking for an attorney so that he would have someone to advocate for his social rights in response to the petition of the conservators. The court appointed LeAnne Maillian to represent Gregory in the proceedings.

I sent my first email to Ms. Maillian on September 17, 2013. In the email, I introduced myself and the Disability and Abuse Project. I explained that the Project had selected Gregory's case as a case study for educational purposes.

Over the course of the following months, I sent many emails to this attorney. Some of the emails had documents attached. They explained about Gregory's First Amendment right not to associate with someone if he did not want to. They also reminded her of his right to effective assistance of counsel. She was also cautioned about the inherent conflict of interest presented because of her dual role as Gregory's advocate and also as someone obligated by court rule to assist the court in resolving the matter. She was also reminded that it was her duty to advocate for Gregory's stated wishes, not for what she believed was in his best interests.

Several other emails sent Ms. Maillian letters of support from people who knew Gregory very well. These letters offered information and opinions about Gregory's ability to make his own social decisions.

Despite receiving all of these emails, documents, and letters, Ms. Maillian did not advocate to defend Gregory's right to make his own social decisions. She did not raise any constitutional objections to the conservators' request for an order giving them the power to decide Gregory's social contacts and social activities. Instead, she surrendered his social rights. She did not oppose the court's decision to transfer full authority on social matters to the conservators. She did not file a notice of appeal on his behalf.

These emails can be found online at:
www.disabilityandabuse.org/gregorys-case/emails.pdf

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