# Limited Conservatorships:
## Systematic Denial of Access to Justice

A Report Submitted to the
Senate Judiciary Committee

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SENATE JUDICIARY COMMITTEE

## Exhibits to Report

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# Ten Statewide Concerns About the Limited Conservatorship System

by Thomas F. Coleman

**State Constitutional Requirement – Uniform Operation**

Article IV, Sec. 16 says that laws of a general nature (such as the Probate Code) have uniform operation.

**Court Appointed Attorneys – Scope of Representation**

The Probate Code entitles limited conservatees to a court-appointed attorney. This is not uniform if some attorneys are doing "stated wishes" advocacy while others are doing "best interests" advocacy. The Presiding Judge in Los Angeles tells attorneys it is up to them as to which type of advocacy to give. The judge from Orange County said that "best interests" advocacy is not allowed and that there is a California Supreme Court decision that requires "stated wishes" advocacy. This is not uniform operation of law.

**State Bar Standards – Confidentiality and Loyalty**

Confidentiality and loyalty are ethical standards for the entire state. A trainer at a recent PVP training told attorneys "you can't rat out your client." And yet, attorneys are told to use the PVP report form on the LA Probate website to advise the court of their findings regarding the client. On that form, they "rat out" their client by disclosing confidential information and by sharing information adverse to their client retaining rights. I have not found any clear guidance from the State Bar as to the role of court-appointed attorneys in conservatorship cases, despite the assertion of a committee member that such guidance exists. If it exists, why are the attorneys in Los Angeles violating these standards. Since the practices of attorneys in Los Angeles violate the duties of confidentiality and loyalty, it is clear that laws of a general nature (state bar standards) are not uniform in operation.

**California Rules of Court – Attorney Qualifications**

Court form GC-010 must be filed by attorneys who want appointments to represent conservatees or proposed conservatees. The form is premised on Rule 7.1101(b). The minimum standards of this rule and as stated in this form are totally inadequate, especially for attorneys who will represent people with developmental disabilities. A private attorney qualifies by having represented three LPS conservatees, proceedings which are completely different from limited conservatorships and which usually have involved a conservatee without a developmental disability.

Another way to qualify is by having done three of five tasks, including: (1) having prepared several estate planning documents; (2) having represented fiduciaries; and (3) having represented a petitioner in two contested probate conservatorships. None of these three things shows qualifications to represent a proposed conservatee who has a developmental disability.

There are absolutely no educational or training requirements at all, especially none concerning interviewing people with developmental disabilities, complying with ADA requirements, abuse of people with developmental disabilities, voting rights laws, Lanterman act rights, or constitutional rights of any nature. These state rules on attorney qualifications are TOTALLY inadequate and allow for a lack of uniform operation of law.

**Department of Developmental Services – Oversight of Regional Centers**

The Probate Code requires Regional Centers to assess clients and file reports in limited conservatorship cases. Judges must consider these reports in making decisions. There are 21 Regional Centers and each one is a separate corporation. We have been told that each one is free to do as it wishes in terms of these evaluations and reports.

Although Regional Centers are supposed to be accountable to the Department of Developmental Services, from whom they receive their funding and with whom they contract, it appears that DDS has no regulations for the evaluation criteria, the number of hours needed for evaluations, the minimum qualifications for evaluators, or the training standards for evaluators when it comes to limited conservatorship

evaluations. Laws of a general nature are not operating uniformly in this area.

**ARCA**
**– Not Coordinating Regional Centers**

Regional Centers have a voluntary statewide association known as the Association of Regional Center Agencies. We reached out to them on the problems with the limited conservatorship process. We invited them to our conferences. They showed no interest at all.

**Court Investigators**
**– Local Control and Not Statewide Uniformity**

Court investigators are required by statute to investigate initial filings in limited conservatorship cases and conduct biennial reviews. The statute must assume competency in the performance of their duties. Some local courts, such as in Los Angeles, completely stopped using investigators in initial filings. This function stopped for at least three years. Other counties did not stop using investigators – thus a breach of the uniform operation requirement of the state constitution, plus a violation of statutory requirements. A review of training materials used in Los Angeles to train investigators shows a total deficiency of training for their role in limited conservatorship cases. Some courts use a training manual published in 2009 by the state court investigators association. That manual is inadequate in many ways. It appears that the court investigator association is all but defunct. A review of its website shows that most pages have not been updated for years.

**Judicial Education**
**– A Complete Void**

From the manner in which some local judges are functioning, it must be assumed that they have not been educated about the administration of justice involving people with developmental disabilities. There appears to be no training on federal voting rights laws, on federal ADA requirements, on Lanterman Act rights, on the constitutional rights of conservatees, on professional standards and ethics for attorneys, or on the basics of developmental disabilities. They may know a lot about wills and trusts, or general conservatorships involving money disputes regarding seniors, but when it comes to *Developmental Disabilities 101*, they are not educated. Any judge who is educated has received the education on his or her own. Judicial functions should be uniform throughout the state. They are not, and a lack of uniform judicial educational standards is part of the problem.

**Voting Rights**
**– Hit and Miss**

Federal voting rights laws govern the entire state. The Elections Code governs the entire state. The voting disqualification provision in the Probate Code is a statewide provision. Yet the disqualification of limited conservatees from voting appears to be a function of the individual interpretations of the law by judges, attorneys, court investigators, and petitioners. Until the passage of AB 1311, state law was extremely ambiguous. Now there is some clarification, in policy, but who is going to educate the judges, attorneys, and other participants about this clarification? Who will educate them about the "literacy test" prohibition of federal law? The Presiding Judge of Probate in Los Angeles told a group of PVP attorneys that if they want to raise a federal law issue, they should file a federal lawsuit. What? This statement is completely unacceptable. These attorneys can raise such an objection in state court by objecting to a proposed disqualification order on federal constitutional grounds and then by appealing from an adverse order. Who is training public defenders or court-appointed attorneys on how to defend the voting rights of their client? Nobody is.

**Lack of Oversight**

Every other part of the judicial system has some oversight, some checks and balances. Sometimes the checks come from an executive branch agency involved in the process, such as District Attorneys or Public Defenders involved in LPS conservatorships. Other times it comes from the appellate process, so appellate judges can publish decisions that correct judicial or attorney errors or abuses. There are no executive branch agencies involved in limited conservatorships, so there are no checks and balances from the executive branch. There are no appeals in limited conservatorship cases, especially not by court-appointed attorneys whose appointments expire before an appeal can be taken. We have all heard that "power corrupts and absolute power corrupts absolutely." Probate Court judges have absolute power – and they know it.

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# A Common Scenario of Assembly Line Justice in Limited Conservatorship Proceedings

by Thomas C. Coleman

Nancy, who has autism, is about to turn 18 years of age. Her parents are advised by the Regional Center that they should think about initiating a conservatorship proceeding.

The parents know nothing about the law and, having a low-income household, cannot afford to hire an attorney. They hear about a self-help clinic operated by Bet Tzedek Legal Services.

The parents call Bet Tzedek and schedule a spot for them in a clinic where 25 families will fill out forms in a group setting. They are told to bring certain basic information with them.

The parents attend the clinic even though they have received no instruction about the rights of conservatees or the duties of conservators. They have not attended any educational seminars about conservatorship and what it means. They have not consulted with a lawyer.

At the clinic, the parents view a slide show that shows them the boxes on the forms that are typically checked off by petitioners such as themselves. They go through the forms, page by page, checking off the boxes and filling in the blanks with the required information.

If they have legal questions about the ramifications of what they are declaring in these forms, there is no one to answer them. Bet Tzedek staff and volunteers cannot give legal advice.

The parents check off a box stating that Nancy "is unable to complete an affidavit of voter registration." Nancy cannot read, can barely write her name, and has a low-normal IQ, so they cannot imagine her completing such a form on her own.

Attached to the court forms is a page that asks the court to give them all "seven powers" and to remove those rights from Nancy. The parents sign the forms and give them to the clinic staff who will then file it for the parents with the court.

A few weeks later, the court appoints an attorney to represent Nancy in the limited conservatorship proceedings. The attorney was selected from a list of Probate Volunteer Panel (PVP) lawyers who have signed up to handle such cases.

The attorney has no special skill or training about the dynamics of autism, or how it affects the thought processes or emotions of people who experience that condition. The attorney attended a three-hour seminar on one occasion during which he listened to a few judges and attorneys who talked about the limited conservatorship process.

At the seminar, the attorney was told that the law was unclear about what his role should be. Should he advocate for what the client wants or should he advocate for what he personally believes is best for the client? He will have to decide that for himself.

"If you don't agree with what your client wants, then tell the court what she wants, then explain why you think that is wrong and say what you think is best," a judge at the seminar explained. "Put both perspectives in your report to the court."

The attorney remembers that another judge explained that if the attorney believes that the client cannot fill out an affidavit for voter registration on her own, then the attorney must say so in his report to the court. "A parent cannot fill out the form for the adult child," the judge advised.

The attorney knows nothing about federal voting

rights laws and has never been educated about the Americans with Disabilities Act and its application to legal proceedings.

The attorney was also advised at the seminar that he will be acting as a substitute for a court investigator. Although the law contemplates that a court investigator interview the proposed conservatee and family members and evaluate her capacities to make decisions and to vote, due to budget and staff cuts, an investigator will not be involved. So the attorney will be acting as a de-facto court investigator. "Put everything in your report that an investigator would have put in his report," the seminar advised.

The attorney knows that his time on the case is limited. Because of budget cuts, the court requires attorneys to spend less than 10 hours on a case, including time in court, without prior approval.

The attorney goes to the home to interview the parents. Because Nancy is mostly non-verbal, the attorney says very little to her directly. She is present when the attorney interviews the parents so she gets the drift of what is happening by overhearing that conversation.

The attorney does not go to Nancy's school, nor does he talk to the coach of the soccer team on which Nancy plays. He does read a report prepared by the Regional Center.

That report recommends that the parents be given five of the seven powers, but that she retain her right to make decisions regarding marriage, sexual contacts, and social relationships. The attorney notes, but basically ignores the recommendation since he knows the Regional Center almost always makes such a recommendation as a matter of principle.

Although he has not asked the court for a psychologist to be appointed to evaluate Nancy's capacities in any of these areas, the attorney concludes that it is better if her parents are given all seven powers.

The attorney files a report with the court. The report is a public document. If he does not oppose any of the parents' requests as indicated in their petition, then the petition will be unopposed and will be routinely granted by the court.

The attorney's report is typical of other PVP reports. He checks off the voting box on the form that he knows will result in the court entering an order disqualifying Nancy from voting. He checks of boxes next to all seven powers asking the court to grant the parents the authority in all of those areas and to remove those rights from Nancy.

Nancy and the parents appear in court. The judge is polite and asks her to speak. She is mostly silent. No one has filed a form with the court to advise the court that she needs Assistive Communication Technology in order to communicate her thoughts to others. So Nancy nods her head and says hello and nothing of substance is said.

No one has asked Nancy how she feels about losing her right to make her own decisions about which relatives she visits, or which friends she hangs out with. Nancy despises her grandfather who she feels gets too physical with her on occasion and says things that make her feel bad. As a child, she was forced to spend several weekends a year with her grandparents. Now that she is an adult, she would prefer not to go to the grandparents home anymore.

No one asks Nancy about whether she has a boyfriend and whether she wants to be able to decide for herself whether or when to kiss him or become intimate with him. No one asks her about her knowledge of birth control or other methods of protection from sexually transmitted diseases.

After the "hearing," the judge enters an order that gives the parents all seven powers. The parents can now require Nancy to spend weekends with the grandparents. She does not have the right to say no. The judge also enters an order disqualifying Nancy from voting.

The case is "closed" and the attorney is dismissed. Three days later, the attorney is contacted by the court to take a new case. The scenario begins again.

# Limited Conservatorship Reform in California: Several Areas That Need Improvement

by Thomas F. Coleman

**Education of Parents**

Most limited conservatorships are initiated when parents or family members of an adult with a developmental disability file a petition with the Probate Court. Some 90% of these petitions are filed "pro per" which means the petitioner does not have an attorney.

The law does not require "pro per" petitioners to educate themselves about the duties of a conservator and the rights of a conservatee prior to initiating a limited conservatorship proceeding. In Los Angeles County, educational programs on these topics are not available.

Bet Tzedek Legal Services does offer a Self-Help Conservatorship Clinic, but this is not an educational forum. It is a class that helps people fill out forms. Legal issues are not discussed. Legal questions are not answered. It is strictly a form-filling service.

1. Attending an educational seminar on limited conservatorships should be required, before a petition is filed, for anyone who will be named in the petition as a proposed conservator. The Superior Court could contract with a nonprofit agency, such as Bet Tzedek, Regional Centers, or the County Bar Association, to conduct these seminars. Topics should include: (1) duties of conservators; (2) general rights of conservatees; (3) voting rights of adults with developmental disabilities; and (4) how to assess capacity of a proposed conservatee regarding the "seven powers," especially on their ability to make social and sexual decisions.

**Education of PVP Attorneys**

Having court-appointed attorneys who are effective advocates for limited conservatees is critical for the rights of adults with developmental disabilities to be protected.

Currently, PVP attorneys are not receiving adequate education and training on issues that often arise in limited conservatorship proceedings. For example, in 2013 there was only one training in Los Angeles County – 3 hours in duration – for PVP attorneys who handle limited conservatorship cases.

2. Attendance at a series of 3 to 5 hour classes should be required before an attorney is placed on the limited conservatorship PVP list. Once on the list, a 5 hour refresher and update class should be required each year in order to stay on the list. Topics should include: (a) constitutional rights of limited conservatees and how to protect those rights; (b) voting rights of limited conservatees and federal laws protecting voting rights of people with disabilities; (c) Americans with Disabilities Act and ADA accommodation requirements for the Probate Court and for PVP attorneys; (d) criteria for assessing client capacities on each of the "seven powers" and how to challenge assessments which are not scientifically valid or not supported by substantial evidence; (e) how to conduct a forensic interview of a client with a developmental disability; (f) ethical rules and professional standards governing the confidentiality of client communications to the PVP attorney and the confidentiality of information gathered by an attorney on behalf of his or her client; (g) how to understand, interpret, and use a "capacity declaration" submitted by a medical doctor or psychologist; (h) understanding the various types of intellectual and developmental disabilities and their impact on daily living and capacity for decisions (Autism Spectrum Disorder, Cerebral Palsy, Fragile X Syndrome, Down Syndrome, Epilepsy, Fetal Alcohol Syndrome, and Intellectual Disabilities (formerly

called Mental Retardation), among others.); (i) understanding various communication methods and behavioral characteristics (j) limits on time allocated to a case and when to ask for more; (k) standards for ineffective assistance of counsel (IAC) as applied to a limited conservatorship case; the right of a client to a "Marsden" hearing to ask for a new attorney or complain about an attorney's performance; (l) appellate rights of clients, including habeas corpus to challenge an order due to IAC.

**Replacing the PVP System**

The current system for appointing, paying, and monitoring the performance of PVP attorneys is not doing what it should be doing. It gives the appearance of favoritism rather than fairness in the way attorneys are selected. It gives incentives to attorneys to please the judges who appoint them and pay them. And it does not have any quality assurance procedures.

Appointment of attorneys should be done on a fair rotational basis, selecting attorneys on lists that match their skills and training with the complexity of the case. Such lists can also note language abilities that match attorneys with clients who do not speak English. The person who selects the attorney should not have any direct connection with the judge who will make decisions in the case.

There should be some form of quality assurance oversight procedures. This should be done by an entity or person with knowledge of limited conservatorship advocacy and, again, by someone who is not working for the judges who hear such cases.

Payment of court-appointed attorneys should be based on the quality of performance and the quantity of work done. Recommendations for the amount of payment should come from someone knowledgeable about these types of cases. The judge who orders payment to a particular attorney should not be the judge who heard the case, so as not to create an appearance of conflict of interest created by payment decided by someone the attorney would not want to offend by objecting, demanding hearings, or advising the client to appeal.

3. A system similar to that operated by the Los Angeles County Bar Association for appointed attorneys in criminal cases should be adopted for use in conservatorship cases, both limited and general. The Indigent Criminal Defense Appointments Program has been operating successfully for several years. It achieves all three objectives mentioned above: a fair selection process, quality assurance procedures, and a payment method that removes incentives for pleasing judges rather than providing vigorous advocacy. The system could be called the Conservatorship Appointments Program. Perhaps it could be grafted to the current criminal appointments program so that it uses the same administrative mechanisms but with additional staff who have expertise in conservatorship litigation. The Conservatorship Appointments Program of the Los Angeles County Bar Association would select attorneys for specific cases, monitor performance and conduct quality assurance audits, provide trainings, and recommend payments.

**Effective Advocacy by Attorneys**

In the current system, PVP attorneys are acting in two or three different roles. They often serve as a de-facto court investigator and their reports are even used as substitutes for those of official Probate Investigators. They also may view themselves as the "eyes and ears of the court" with the aim of helping the court resolve cases. They also may act as an unofficial guardian-ad-litem, advocating for what they believe is in the best interest of the client.

4. Court appointed attorneys for limited conservatees should have one role only – vigorous advocacy for the client. They should advocate for what the client says he or she wants. Absent an express wish from the client on any particular issue, they should strongly defend and protect the rights of the client from being diminished or removed. They should be no different than privately retained attorneys. The client's wishes and rights should come first. The fact that they are paid by county funds should not alter their undivided loyalty to the client.

**Bet Tzedek**

Bet Tzedek performs a valuable service by helping petitioners complete the paperwork needed to obtain an order and letters of administration for a limited conservatorship. However, in the process, the clinics may be inadvertently suggesting that petitioners unnecessarily take rights away from conservatees and improperly seek more authority than they truly need.

5. The Self Help Conservatorship Clinic should not suggest, directly or indirectly, that proposed limited conservatees are unable to complete an affidavit of voter registration (with or without help from someone else). The clinics also should not lump all "seven powers" together as a package deal, or group them together as an attachment to the petition. Each power should be listed separately, with a yes or no box next to it, so that each is considered separately by the petitioner.

Bet Tzedek sometimes provides direct legal representation to petitioners in conservatorship cases that are more complicated than usual. However, the organization does not provide attorneys to represent limited conservatees. The rationale for this policy is that limited conservatees can have court-appointed attorneys at county expense. However, sometimes PVP attorneys are not capable of, or simply do not provide effective representation. The blanket policy of not representing limited conservatees should be reconsidered.

6. Bet Tzedek should sometimes represent limited conservatees upon request in cases that offer an opportunity to create a precedent on important issues such as voting rights, social rights, or sexual rights of people with developmental disabilities. It should also represent limited conservatees, from time to time, in appeals that may set important policy precedents, or in writ proceedings to challenge ineffective assistance by PVP attorneys when that happens. Periodic involvement by such an outside organization, on behalf of limited conservatees, would be a beneficial addition to the Limited Conservatorship System.

**Regional Centers**

At this time, it appears that the only role that Regional Centers play in limited conservatorship cases is that of assessing the capacity of clients to make decisions regarding the "seven powers." There is so much more these nonprofit organizations can do to protect the rights of their clients who they find themselves the subject of such a proceeding. And even in the role of assessing clients, there are ways Regional Centers can improve.

8. Regional Centers should file capacity assessment reports in a timely manner. Such reports are sometimes filed with the court weeks or even months after the court grants a petition. This is not an acceptable practice, either for the court or for the Regional Center.

9. Regional Centers should do more to protect the right to vote of their clients. Educational materials about the right to vote of people with developmental disabilities should be distributed a few months prior to a client turning 18. Group seminars about the right to vote should be conducted at least every two years, several months before the deadline for registration for a general election.

10. Regional Centers, perhaps through or with the assistance of their statewide association (ARCA) should consult with medical, psychological, and legal professionals to develop criteria and guidelines for assessing each of the seven powers. Training programs for Regional Center staff should be developed and implemented regarding these issues. It appears that currently there are no such guidelines or training programs being used.

11. Regional Centers should become acquainted with the various federal laws governing the right to vote as they apply to people with disabilities. These protections should be considered as Regional Center staff include in their assessment report an opinion on the capacity of the client to complete a voter registration affidavit, with appropriate help. Currently, Regional Center reports are silent on the issue of voting capacity.

**Disability Rights California**

A nonprofit legal services organization known as Disability Rights California receives state and federal money to protect the rights of people with developmental disabilities.

Some of this money is channeled to DRC through the State Department of Developmental Services. The annual budget of DRC is nearly $20 million.

DRC employs a staff of Clients Rights Advocates whose role is to protect and advocate for the rights of Regional Center clients. Staff members are generally housed with Regional Centers, even though they are employed by DRC.

These Clients Rights Advocates currently play no role in the Limited Conservatorship System. Apparently this is so because such a role is not part of the contract of DRC with the State Department of Developmental Services. Perhaps this absence from contractual duties is why none of the CRA's housed in the seven Regional Centers in Los Angeles County attended the first conference on limited conservatorship sponsored by the Disability and Abuse Project.

12. Disability Rights California, and its Clients Rights Advocates, should play an active role in monitoring the Limited Conservatorship System and in advocating for Regional Center clients when their rights are threatened or are actually infringed. Clients Rights Advocates should be informed when social, sexual, marriage, or voting rights of Regional Center clients are in jeopardy. They should advise attorneys at DRC when this occurs and the attorneys should intervene, as an interested agency or as an amicus curiae in the trial court. DRC should also file a "next friend" appeal or writ when it learns that the constitutional rights of a limited conservatee have been violated or the conservatee has not received effective assistance of counsel. Such involvement by an outside agency funded by the Executive Branch of government would have a beneficial effect on the Limited Conservatorship System which, up to now, is not monitored by any agency outside of the Judicial Branch.

**Los Angeles Superior Court**

The Los Angeles Superior Court is aware of but has not cooperated with the study being conducted by the Disability and Abuse Project.

One short interview with the Presiding Judge of the Probate Court was granted. But subsequent requests of the Project for interviews with key personnel received no response. A formal request for information and access to records, per Rule 10.500, received a cursory response which mostly declined to provide information or access to records. The minimal information that was provided to the Project was ambiguous.

13. The Superior Court should welcome inquiries from advocacy organizations about its operations. Interviews should be granted. Information about fiscal matters, policy, procedure, and administrative practices should be shared without reluctance or resistance. More transparency is needed.

**Adult Protective Services**

Complaints of abuse of adults with developmental disabilities are reported to either Adult Protective Services (APS) or to the Sheriff. Each of these agencies cross reports complaints to the other, as required by law.

However, a top management official at APS has stated that APS is not require to cross report to the Probate Court in cases where the alleged victim is a limited conservatee. This may be done as a matter of "best practices" but the agency does not consider it to be mandatory.

14. The State Council on Developmental Disabilities, or a state legislator, should ask the Attorney General or the Legislative Council or both for an opinion on the APS duty to report to the Probate Court. If the opinion concludes that mandatory reporting is not required, then legislation should be introduced to make it mandatory. Limited conservatees need such additional protection.

**Involvement by Other Agencies is Needed**

15. The Limited Conservatorship System is not receiving attention from the Legislature, especially the judiciary committees in each house. It is not being monitored by the State Department of Developmental Services. Nor has the Department of Justice given this system any attention.

16. The State Council on Developmental Services has a mandate to protect the rights of children and adults with developmental disabilities, to monitor agencies that provide services to this constituency, and to seek systemic changes where needed. Despite this mandate, the State Council has not yet focused any of its attention or resources to the Limited Conservatorship System.

17. The Judicial Council of the State of California created a Task Force focusing on the General Conservatorship System in 2006. It is time for such an inquiry into the Limited Conservatorship System – and it should not require a series of articles in the Los Angeles Times for it to initiate such a review.

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Other Conference Materials:

www.disabilityandabuse.org/conferences

# A Presentation on Self-Help Clinics Reinforces the Need for *Major* Reform of the Limited Conservatorship System

by Thomas F. Coleman

I attended a presentation at the Beverly Hills Bar Association on March 31, 2014. The Speaker was Josh Passman of Bet Tzedek Legal Services. The presentation described the operations of their Self-Help Conservatorship Clinic.

Before the presentation began, I was able to converse with Josh about some basic facts concerning what I call the Limited Conservatorship System, about Bet Tzedek, and about the Self-Help Clinic.

Bet Tzedek helps parents or family members to file the necessary paperwork to obtain a limited conservatorship for their adult child who has a developmental disability. This is done through the organization's Self Help Legal Clinic.

With the help of Bet Tzedek, about 1,000 such petitions are filed each year with the Los Angeles County Superior Court. Since some petitions are filed without help from the Clinic – by people with attorneys and people who just do it on their own – it seems safe to conclude that at least 1,200 new petitions for limited conservatorship are filed with the court each year with or without the Clinic.

The Self Help Legal Clinic operates under a contract with the court. Some of its funding comes through a grant from the Equal Access Fund of the State Bar Association of California. Bet Tzedek received a grant of $85,000 in 2013.

Parents find out about the Clinic from a variety of sources: Regional Centers, other parents, online searches, etc. Clinics are operated three mornings a week at the downtown courthouse and one day a week in three branch courts. Walk-in clients are assisted on an individual basis.

The Clinic has a group workshop at the Bet Tzedek headquarters two afternoons a month. Parents are given advance appointments to attend these sessions.

Parents get a one-page information gathering sheet prior to attending the group workshop. Only basic information is requested: name of petitioner, name of proposed conservatee, address, social security number, etc. They are told to bring this sheet to the workshop.

It appears that parents are not given any other written materials or educational instruction prior to attending the group workshop. They do not receive advance information on the duties of a conservator or the rights of a conservatee.

At no time – prior to, during, or after the workshop – are parents given information about voting rights of an adult with developmental disabilities or criteria for deciding whether the voting rights of the proposed conservatee should be taken away.

Parents do not receive any information about criteria for deciding whether to ask the court to grant the conservator any or all of the "seven powers" or to allow the proposed conservatee the right to make his or her own decisions in these areas.

The "seven powers" include the authority to make decisions *for* the conservatee in: (1) deciding residence; (2) having access to confidential records; (3) consenting or withhold consent to marriage; (4) controlling finances; (5) consenting to medical treatment; (6) controlling social and sexual contacts; and (7) making educational decisions.

If parents have an attorney to represent them in the proceeding, the attorney would have an obligation to explain each of these "seven powers." The attorney would also have an obligation to explain that limited

conservatorships are intended for the conservatee to keep as many rights as possible so that he or she can live as independently as possible. Since the Clinic does not provide legal representation, none of this is explained to the parents during the workshop.

It appears the form used at the Clinic automatically asks that all "seven powers" be given to the conservator. The form does not seem to give the parent the option to check yes or no to individual powers.

The petition mentions the issue of voting. There is a place for the parent to specify whether the proposed conservatee is or is not able to complete an affidavit of voter registration. During the presentation that I attended, the power point slide on this issue had checked the "is not able" box on the form.

When I raised a question about how the workshop helps the parent decide whether to check off the "is able" or "is not able" box on voter registration, the answer was that it does not explain this. Parents are left to their own devices to make this decision.

Along with the petition, parents are instructed to fill out and file a proposed Order Appointing Court Investigator. The law specifies that in each case, a Probate Investigator (who works for the court) must investigate the case and conduct a face-to-face interview with the proposed conservatee.

The Legislature intended for the court to receive information about the proposed conservatee from multiple sources. This helps the court to verify the accuracy of information and the need to give any or all of the "seven powers" to the conservator.

A medical doctor or psychologist should file a capacity declaration with the court. The Regional Center should file an assessment of capacities on the "seven powers." A court investigator should also file a report, as should an attorney appointed to represent the proposed conservatee.

My review of a large sample of court dockets suggests that the court sometimes bypasses the Probate Investigator's report by having the parties to the case waive that report and allow the PVP attorney report to be used as a substitute. When I asked Josh Passman about that practice, he said that he was not aware of it, but that he had heard of the courts allowing the Regional Center report to be used as a substitute.

One item that is not included in the group workshop is the issue of ADA accommodation requests under the Americans with Disabilities Act.

The Superior Court has a form (MC-410) called "Request for Accommodations by Persons with Disabilities." This form can be used to inform the court that a party to a case has a disability, what that disability is, and how the court can accommodate the disability. It can be submitted by the person with a disability or by someone on his or her behalf, such as a parent.

The ADA requires the court, and attorneys representing clients, to give reasonable accommodations to litigants and clients with disabilities, both in and out of the courtroom. This does not just apply to physical disabilities. It also applies to cognitive and communication disabilities.

The request is intended to be confidential. Once the court knows the nature of the disability and the type of accommodation being requested, the court's ADA compliance officer should respond by granting or denying the request.

Parents are told at the workshop that their adult child will receive a court-appointed attorney. They learn that the "PVP attorney" will come to their home and is supposed to interview their child. They are also told that in most cases their child will be required to appear in court and to answer questions presented to them by the judge.

All limited conservatees have developmental disabilities. These may involve cognitive or communication functions. Many conservatees are nonverbal. Some experience emotional disruptions to attention span or speech functions. Many use Augmentative and Alternative Communication (AAC) technology.

It would certainly be appropriate for someone to explain the details of ADA accommodation to parents and to assist them in preparing an appropriate request to be filed when the petition and other paperwork is submitted to the court.

During the presentation, an unexpected issue came up that raised my eyebrow and caused me concern – waivers of court fees.

A fee of $435 is supposed to be paid by the petitioner when he or she files a petition for limited conservatorship. A Request to Waive Court Fees can be filed by the petitioner if he or she is getting public benefits, is a low-income person, or does not have enough income to pay for basic household needs and the court fees.

When a person with a developmental disability turns 18, he or she will be eligible to receive public benefits (Medi-Cal, Food Stamps, or SSI) based on their own income. Most of them, therefore, do or will receive public benefits.

Public benefits for the parents of a proposed conservatee are another matter. If they are low income, they may receive such benefits. If they are middle-income, they may or may not. If they are in the higher end of the income scale, they will not.

The workshop advises parents on how to fill out the fee waiver form in a manner that virtually guarantees that they will not have to pay filing fees or court costs – even if they have a high income household. Parents are informed they can check yes to the public benefits question if their child gets benefits.

When they print their name at the bottom of the fee waiver request, they are told to insert the words "based on income of proposed conservatee."

When I heard this at the presentation, a bell rang in my memory. I recalled wondering why so many fee waivers were granted in limited conservatorship cases. In a sample of 85 cases for the month of October 2013, fee waivers were granted in nearly all cases in which the petitioner filed the case without an attorney. Most of these were probably filed with the help of the Self Help Legal Clinic.

When I first noticed this pattern, I could not believe that nearly all parents of proposed conservatees had low incomes. Now I know that they do not.

The parents who come to the workshops and the walk-in clinic are helped regardless of household income. Some are poor, but others are middle income or higher. They can get around the need to pay a filing fee by declaring financial hardship, not based on the income of the petitioner, but based on the income of the proposed conservatee.

The morning after the presentation, I began to wonder if this fee waiver maneuver was legal. What do court rules and state statutes have to say about eligibility for waiver of court fees and costs?

Rule 3.50 of the California Rules of Court states that fees can be waived "based on the **applicant's** financial condition." (Emphasis added.) Rule 3.51 says the court clerk must give the fee waiver application form to anyone who asks if "he or she is unable to pay any court fee or cost." These rules suggest that fee waivers should be based on the financial condition of the person asking for the waiver. In this case, that is the parent (petitioner), not the child who will become the conservatee.

The Legislature has declared public policy on equal access to justice – who should pay fees and when they should be waived. Government Code Section 68630says "[t]hose who can afford to pay court fees should do so." That makes sense. Those who use the courts should help fund the courts, if possible.

Government Code Sec. 68631 tells courts to grant a fee waiver "if an **applicant** meets the standards of eligibility." Again, Section 68632 refers to "an **applicant's** financial condition." (Emphasis added.)

With these statutes and court rules in mind, and with the courts in a financial crunch due to a restricted state budget, it does not make sense that a parent with a household income of $100,000 would have

court fees waived in a limited conservatorship proceeding. Something seems amiss.

Clearly, telling the parents to insert the words "based on income of proposed conservatee" puts the court clerk on notice that the fee waiver request is totally unrelated to the income or assets of the petitioner or applicant for the fee waiver. It is also clear that the court clerk is routinely granting the requests.

The clerk would not be doing this without instructions from someone in authority, such as the chief clerk and/or the presiding judge.

If this fee waiver is occurring in most of the 1,000 petitions filed with the help of Bet Tzedek, then the Los Angeles County Superior Court could be losing hundreds of thousands of dollars per year in revenue.

Perhaps I am making an issue of something that is perfectly legal. I could have overlooked another relevant statute or court rule. Maybe a policy decision has been made that this fee waiver process complies with court rules and state statutes.

But this could be an informal practice that has developed without the knowledge of the Administrative Office of the Courts or the California Legislature. In any event, it is certainly a fiscal process that deserves closer attention.

**Preliminary Recommendations**

Based on what I learned at the presentation on the Self Help Legal Clinic, along with observations from reviewing scores of court dockets, analysis of statutory and case law, and various interviews, several ideas have emerged as to how the Limited Conservatorship System can be improved.

First, parents need to be educated about the duties of conservators and the rights of conservatees. This education should occur, prior to filing a petition for limited conservatorship, perhaps at a mandatory seminar for proposed conservators held at a Regional Center. Such a seminar would also explain the voting rights of adults with developmental disabilities, guidelines on the "seven powers," and the duty of judges and attorneys to provide ADA accommodations to proposed conservatees.

If parents seek assistance through a Self Help Legal Clinic, they should have to attend the seminar (perhaps a three hour training) prior to attending the group workshop. Parents are assuming a major responsibility and fundamental rights of the adult child are at stake. These cases should not be processed on such a fast moving assembly line.

After the parents attend a seminar on limited conservatorships, they should give the Regional Center a written notice of their intent to seek a limited conservatorship. This should trigger the duty of the Regional Center to conduct an assessment of the clients capacities and prepare a report and recommendations on which of the "seven powers" should be taken from the client. The parents should be required to read the Regional Center report prior to filing a petition with the court.

If a parent has an attorney, perhaps the seminar should not be mandatory. However, all proposed conservators, whether they have an attorney or file the petition "pro per," should be required to submit an acknowledgment of rights and duties with the court *when they file the petition*. The form should affirm that they have received and read the Conservatorship Handbook, the Duties of a Conservator form, and the Rights of Conservatees form.

The Regional Center report would be filed with the court prior to the appointment of a PVP attorney for the proposed conservatee. A court investigator report would be filed in all cases (and not be waived). The court would then have the variety of sources of information contemplated by the Legislature prior to the hearing on the petition.

Nothing that I have said diminishes the importance of the Self Help Legal Clinic or its vital role in helping parents. We sincerely hope that Bet Tzedek will support our effort to reform the Limited Conservatorship System, with the cooperation of relevant agencies and concerned individuals.

# A Missed Opportunity

## Training Program Fails to Help Attorneys Fulfill Ethical Duties and Constitutional Obligations to Clients with Developmental Disabilities


Thomas F. Coleman
Legal Director
Disability and Abuse Project
Spectrum Institute

September 20, 2014
www.disabilityandabuse.org/pvp-training

# Preface

The Disability and Abuse Project has been engaged in an intense study of the Limited Conservatorship System in California, with a special focus on the Los Angeles Superior Court.

We engaged in independent research by reviewing court records, interviewing litigants, observing court proceedings, consulting experts, having conversations with judges, attending training seminars, and convening conferences.

Our work has resulted in a series of reports in which we have revealed our findings and made a significant number of recommendations to improve the system. We shared our concerns with officials and agencies, including: Chief Justice of California, Attorney General of California, Director of the California Department of Developmental Services, Board of Trustees of the State Bar of California, Presiding Judge of the Probate Court in Los Angeles, and the Public Defender of Los Angeles County. We also reached out to the State Council on Developmental Disabilities and its Area Boards, as well as the Association of Regional Center Agencies (ARCA) and the 21 Regional Centers.

Despite our best efforts, little has changed. In fact, in terms of the training of court-appointed attorneys, things have become worse.

This report examines the most recent Training Program conducted by the Probate Court with the assistance of the County Bar Association. The training program failed to help attorneys gain "comprehension of the legal and medical issues arising out of developmental disabilities" as required by local court rule 10.84.

Our next outreach will be to the Board of Supervisors of Los Angeles County. They have been paying the fees of these court-appointed attorneys with no questions asked and with no quality assurance controls in place. Instead of enabling poor performance with no-strings-attached fee payments, the Supervisors have the power to turn things around by imposing conditions on the funding of these attorneys to help insure that the intended beneficiaries of this funding receive effective assistance of counsel.

To use a phrase coined for the Watergate film *All the President's Men*, the next step for those of us seeking reforms in the Limited Conservatorship System is to "follow the money."

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# Probate Court Investigators:
## The Need for Training Is Not Being Met

### The Los Angeles Superior Court Deserves a Failing Grade in Terms of Developmental Disability Issues

by Thomas F. Coleman
Disability and Abuse Project

The Disability and Abuse Project has been investigating the Limited Conservatorship System in California, with a special focus on Los Angeles.

Limited conservatorships are used to appoint a substitute decision maker for adults with developmental disabilities when it is shown they lack the capacity to make decisions in one or more major areas of life. This may involve medical, financial, or educational decisions or personal matters such as consent to have sexual relations.

When a petition for a limited conservatorship is filed – usually by a parent or relative – the law requires a court investigator to determine whether a conservatorship is warranted or not, who the conservator should be, whether the proposed conservatee should be disqualified from voting, and in what areas the proposed conservatee should retain authority.

Investigators are employed by the Superior Court. They work under a Chief Investigator, who reports to the Presiding Judge of the Probate Division.

Investigators are supposed to interview and assess the proposed conservatee, evaluate the home, review medical and educational and work histories, interview the proposed conservators, do a criminal background check on them, and interview parents, children, and siblings of the proposed conservatee.

The investigator should speak with the Regional Center case worker and the attorney appointed to represent the proposed conservatee. A report is then filed with the court and the investigator informs the judge of his or her findings and recommendations.

Investigators must have an undergraduate degree in social science, psychology, or a related field. They must have three years experience doing field investigations as a parole officer, probation officer, law enforcement officer, or social worker. No experience or skills are required in interviewing, interacting with, or assessing the capacities of people with intellectual or developmental disabilities.

Because experience with developmental disabilities is not required to be a probate investigator, *proper* and *thorough* training of new hires and periodic in-service training of investigators are imperative.

The following pages document that probate investigators in Los Angeles County are not being properly trained to conduct investigations and make recommendations in limited conservatorship cases. For example, there is no training on identifying abuse, on assessing capacity to make decisions, on the issue of voting rights, or on compliance with the requirements of the Americans with Disabilities Act.

Courts rely on the investigator's report in making decisions on: whether to grant or deny a conservatorship, who to appoint as conservator, and what rights to take away from the proposed conservatee. The decision of the court is adversely affected if the investigator has not been properly trained on critical issues that are involved in such proceedings.

Based on the trainings that are occurring, limited conservatorship proceedings in Los Angeles lack integrity. People with developmental disabilities are not receiving equal justice.

The Judicial Council of California needs to intervene. Statewide training mandates should be developed for probate investigators. With Los Angeles as an example, it is reasonable to conclude that local courts are simply not making the grade on their own.

# Voting Rights of People with Developmental Disabilities: Correcting Flaws in the Limited Conservatorship System

Voting Rights are Violated Because Judges and Attorneys are Unaware of Federal Laws

by Thomas F. Coleman

People think of voting as a fundamental constitutional right. However, the right to vote is not found anywhere in the United States Constitution.

The California Constitution, on the other hand, does specifically declare: "Any United States citizen 18 years of age and resident in this state may vote." (Cal. Const. Art. 2, Sec. 2.)

The California Constitution also states: "The Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or imprisoned or on parole for the conviction of a felony." (Cal. Const. Art. 2, Sec. 4.)

The Legislature has passed statutes on competency for voting. Mental incompetency is mentioned in the Elections Code and in the Probate Code.

Elections Code Section 2208 states: "A person shall be deemed mentally incompetent, and therefore disqualified from voting if, during the course of any of the proceedings set forth below, the court finds that the person is not capable of completing an affidavit of voter registration in accordance with Section 2150 and [if the following applies]: (1) a conservator of the person or the person and estate is appointed pursuant to Division 4 (commencing with Section 1400) of the Probate Code."

Probate Code Section 1823 (b) (3) states: "The proposed conservatee may be disqualified from voting if not capable of completing an affidavit of voter registration."

Probate Code Section 1910 says that if the judge determines that the conservatee is not capable of completing the affidavit, "the court shall by order disqualify the conservatee from voting."

If these were the only laws involved in determining the voting rights of people with developmental disabilities, the analysis would end here. However, that is not the case. Federal law is also involved.

**Federal Voting Rights Laws**

Because of the "supremacy" provision of the United States Constitution, state statutes and constitutions are superceded by federal statutes that govern the same subject matter. Congress has passed several statutes that apply to voting. Some of them pertain to voting rights for people with disabilities.

The National Voter Registration Act permits, but does not mandate, states to remove voters from registration rolls based on "mental incapacity." (42 U.S.C. Sec. 1973gg-6(a)(b)(3).) However, another provision of the Act requires that such provisions must be in compliance with the Voting Rights Act of 1965. (42 U.S.C. Sec. 1973gg-6(b)(1).)

Section 208 of the Voting Rights Act allows people who can't read or write, or who have any disability, to receive assistance in voting from any person of their choice. (42 U.S.C. Sec. 1973-aa-6.)

Also relevant to the rights of people with developmental disabilities is Section 201 of the Voting Rights Act. That section declares that "No person shall be denied, because of his failure to comply with any test or device, the right to vote in any Federal, State, or local election conducted in any State or political subdivision of a State." (42 U.S.C. Sec. 1973-aa.)

The term "test or device" means any requirement that a person as a prerequisite for voting "demonstrate the ability to read, write, understand, or interpret any matter." (42 U.S.C. Sec. 1973-aa.)

California's requirement that conservatees shall be disqualified from voting if they cannot complete an affidavit for voter registration is a "test or device" as defined by federal law. The Voting Rights Act allows people with disabilities to have help in completing the registration form. It also prohibits states from requiring them to show an understanding of the contents of the voter registration form.

With these federal statutes in mind, and knowing that the California Constitution and state statutes are superceded by these federal statutes, it would appear that California's requirement concerning the ability of a voter to complete the registration application is a "test or device" prohibited by federal law.

Although there is no state or federal court case declaring this California requirement to be invalid because it violates federal law, a federal district court has declared a Maine statute to be invalid because it conflicted with federal law. (*Doe v. Rowe*, 156 F. Supp. 2d 35 (2001).) The Maine statute stated that persons under guardianship due to a mental illness were ineligible to vote.

Furthermore, assuming for the sake of argument that California's statute is not unconstitutional, the court would be required to find, by clear and convincing evidence, that the conservatee cannot complete the voter registration application with the help of another person.

Who is going to prove that? And how? What standard would apply as to how much help the other person can give?

The loss of voting rights for limited conservatees is not academic. Evidence suggests that it may happen quite frequently – perhaps in a majority of cases.

Let's look at how the voting rights issue arises in limited conservatorship cases in Los Angeles.

**An Actual Case**

Consider the real-life case of Roy L. (a fictitious name for an actual case that came to the attention of the Disability and Abuse Project in 2013).

Roy, who has autism, is a client of a Regional Center. He lives with his mother in Los Angeles County. His father lives in another state. The parents are divorced.

His mother realized that she needed to file for a limited conservatorship. She went to a group workshop for such parents. The workshop was conducted by Bet Tzedek Legal Services.

In the group setting, following instructions on how to fill out the necessary paperwork, the mother checked a box stating that Roy was not able to complete a voter registration form. At the time, she did not know that by making such a statement, she was setting in motion a process whereby Roy would be disqualified from voting. No one told her that.

The petition and other paperwork were filed with the Probate Court. The judge assigned an attorney to represent Roy.

Before the attorney came to the home to talk to her and to meet Roy, the mother had a conversation with Roy about voting. He indicated that in the next election for President, he wanted to vote for Hillary.

The mother wondered whether Roy would retain the right to vote, so she asked the court-appointed attorney about this and told him about Roy's desire to vote. The attorney told her that the concept of Roy voting would be inconsistent with the entire purpose of a conservatorship.

When the attorney filed a report with the court about his opinions on Roy's capacities, he stated that Roy was not able to complete an affidavit for voter registration. This was done despite his knowledge that Roy wanted to vote.

Several weeks later, when the mother came to our

Project for help on another aspect of the case, she asked me about Roy having the right to vote. This prompted me to investigate the law, the result of which is the legal analysis which you have just read.

It appears to me that the attorney had not received any training about voting rights for people with developmental disabilities. It also seems that, by the way he dismissed the issue without giving it any thought, he considered it of no importance.

The issue of voting comes up in every limited conservatorship case. Court investigators, to the extent they play a role in a case, are supposed to render an opinion as to whether the proposed conservatee can complete an affidavit of voter registration. The court-appointed attorney is asked to do the same. The judge then generally makes a factual finding and enters an order.

The form used by the judge in each case has a place on it where the judge can check a box before the sentence: "The conservatee is not capable of completing an affidavit of voter registration." There is also a place on the form where the court can check a box entering an order that: "The conservatee is disqualified from voting."

**Self Help Clinics**

The issue of voting came to my attention during a presentation at the Beverly Hills Bar Association. An attorney who works for Bet Tzedek Legal Services, and who is the coordinator of the Self Help Conservatorship Clinic, used a slide show during his talk. The screen displayed forms that are used when parents attend workshops to fill out court forms.

Places on the form that are routinely checked off with an X were checked off on the forms appearing on the screen during the presentation. An X appeared in the box stating that the proposed conservatee was <u>not</u> capable of completing an affidavit for voter registration.

Parents and family members are generally the people who attend these Self Help Clinics. They are the ones who are filing petitions to initiate a limited conservatorship. Unfortunately, prior to attending the Self Help Clinics, such petitioners are not attending educational seminars or receiving legal advice on the implications of which boxes they check on the petition or what assertions they make in them. Thus, they are relying on prompts from the people who operate the Self Help Clinics.

Because the visual prompts have tended to suggest that the proper box to check is that which states the limited conservatee "is not able" to complete the voter registration form, these petitioners are, in effect, asking the court to disqualify the proposed conservatee from voting. Most petitioners probably are not aware that disability accommodation laws allow others to assist a person with a disability in the voting process, including the registration process.

**Review of Court Records**

I recently examined a sample of 61 limited conservatorship cases at the downtown courthouse to determine which conservatees had their right to vote eliminated and which did not. I also examined what role the PVP attorney played in the voting rights determination.

The sample I reviewed included all limited conservatorship cases filed in the downtown court during the last four months of 2012.

Out of the 61 cases I examined, 54 limited conservatees had their right to vote taken away by the court. In all but two of these cases, the order of the court was entered after the court reviewed a PVP report in which the attorney informed the court that the client was unable to complete an affidavit of voter registration. How the attorney reached such a conclusion is unknown.

Based on Roy's case, the presentation by the Bet Tzedek attorney, and my sampling of cases in the downtown court, it is reasonable to conclude that as many as 90 percent of proposed limited conservatees in Los Angeles County may be unnecessarily and improperly losing their right to vote.

More conservatees would retain their right to vote if their court-appointed attorneys were aware of relevant federal laws that protect the right to vote of people with developmental disabilities. The same would be true if their attorneys refused to share potentially adverse information with the court, citing their ethical duties of loyalty and confidentiality.

Attorneys have a duty of loyalty to their clients. The principle of confidentiality applies to information gathered by attorneys during their representation of clients, including information obtained directly from clients as well as from others during interviews and reviews of records.

The duties of loyalty and confidentiality are violated when attorneys file PVP reports with the court to advise the court that their investigation revealed that the client lacks the ability to complete an affidavit of voter registration. Such a disclosure by the client's own attorney is likely to result in the court stripping the client of his or her voting rights. PVP attorneys know that, but despite this knowledge they routinely share information with the court, in a public record, that they know is adverse to the rights of the client.

Proposed conservatees are constitutionally entitled to effective assistance of counsel. Their court-appointed attorneys have a duty to act as diligent and conscientious advocates to protect and defend the rights of the client. This includes the right to vote.

To fulfill this duty, attorneys must be aware of statutes and judicial decisions relevant to the issues that are likely to arise in the case at hand. Legal standards for voting eligibility or disqualification are relevant to limited conservatorship cases.

Attorneys and judges in conservatorship cases should know that eligibility to vote is not only governed by California law but that a variety of federal statutes also must be considered when judicial decisions are being made on the voting rights of American citizens. They *should* know this, but apparently they do not.

In fact, there is reason to believe that court-appointed attorneys are being misinformed about the right of voters with disabilities to have assistance in the voting process. Registering to vote is part of that process.

**PVP Attorney Trainings**

I recently attended a court-mandated training session for PVP attorneys in Los Angeles. One of the presenters at the training was a judge who decides limited conservatorship cases on a daily basis. He mentioned the issue of voting eligibility of proposed conservatees.

The judge told the audience of some 200 PVP attorneys that a proposed conservatee is only qualified to vote if he or she "is able to complete an affidavit of voter registration."

The judge said that the mother of a proposed conservatee once told him in court that her son could satisfy that standard because she could fill out a voter registration form for him. The judge then laughed as he was telling the story which prompted many lawyers in the audience to laugh.

The judge's punch line to the story was: "That's not how it works." No further comment or explanation was made. The judge moved on to discuss other issues not related to voting.

I was shocked at the judge's remarks about voting eligibility. They showed a complete lack of awareness of federal voting rights laws that protect the rights of people with cognitive or communication disabilities.

The audience was left with the impression that unless proposed conservatees can complete a voter registration affidavit by themselves, they are not qualified to vote. This misinformation will no doubt be used by these court-appointed attorneys in future cases. Their clients will lack the benefit of effective assistance of counsel since their attorneys will not be aware that several federal laws protect the voting rights of people with developmental disabilities.

A person with a disability can have someone help them in the registration process. This would include the right of people who cannot read or write to have someone fill out the form for them, despite the judge's statement to the contrary.

Federal law prohibits California or any other state from using any test or device to establish whether a potential voter can read, write, interpret, or understand any matter. Reasonably competent attorneys acting as diligent and conscientious advocates would know this and would therefore refuse to disclose to the court whether their clients are or are not able to complete an affidavit of voter registration.

**Finding Remedies for Past Injustices**

Proposed conservatees, perhaps thousands of them, have been ruled "disqualified" to vote by judges who have relied on adverse public statements of court-appointed attorneys in this regard. These rulings could be challenged as unconstitutional for a variety of reasons, including that the attorney who checked off the "is not able" box in a PVP report was not providing effective assistance of counsel.

Effective assistance is undermined when attorneys lack knowledge of federal voting laws. The constitutional right to counsel is also violated when attorneys violate their duties of loyalty to the client and confidentiality of the lawyer's work product.

Petitions for reconsideration for these limited conservatees, perhaps thousands of them who have been stripped of the right to vote over the years, could be filed. Such petitions would ask that the order disqualifying them from voting be vacated and that the Registrar of Voters be notified of the new ruling.

But who will file such petitions? People with developmental disabilities generally would lack the ability to file such petitions on their own. The role of PVP attorneys generally ends when the court enters an order granting a conservatorship. At that time the court usually enters an order relieving the attorney as counsel for the conservatee.

There must be a remedy for this ongoing violation of the voting rights of limited conservatees. Perhaps the court could enter a general order vacating the voter disqualification orders for the past several years on the ground that the judges and the attorneys were unaware of the applicability of relevant federal laws protecting the voting rights of people with developmental disabilities.

Another remedy in individual cases would be for a conservatee to file a petition for writ of habeas corpus with the Court of Appeal and to ask the court to appoint an attorney to represent him or her in the proceeding. This would be one way to get the issue before the appellate judges, thereby giving them the opportunity to write a published decision that would provide guidance to judges and attorneys who handle conservatorship cases in the Probate Court.

There is also an option for a federal civil rights lawsuit to be filed, under 42 U.S.C. §1983. Such a lawsuit could be initiated by the United States Department of Justice or it could be filed as a class action lawsuit by a private law firm. Of course, such actions would not be necessary if state and local officials in California take steps to reinstate the voting rights of limited conservatees who were improperly disqualified due to the mistake or neglect of state judges or court-appointed attorneys.

Under section 1983, every person who deprives any citizen or other person rights guaranteed by the United States Constitution or federal laws is liable to the injured party. The victim of such civil rights violations may seek damages or injunctive relief or both, except that when the perpetrator of the civil rights violation is a judge, only injunctive relief may be sought.

People whose rights under federal voting laws may also file complaints with the United States Department of Justice. The Department has jurisdiction to investigate such complaints and to enforce the voting rights laws.

In addition to deficiencies in the performance of judges and court-appointed attorneys, there may be

problems with the performance of court investigators, if and when they are involved in limited conservatorship proceedings. It is unlikely that they have received training about the Voting Rights Act or other federal protections that would apply to the voting rights of people with developmental disabilities.

Regional Centers are required to assess seven areas of capacity of the proposed conservatee to make decisions and file a report with the court regarding a counselor's opinion on these issues. Capacity to vote is not an area addressed by the Regional Center.

There are probably 50,000 or more limited conservatees in California, with at least 5,000 being added to what administrators call "active inventory" each year. Who knows how many of them have been or will be unnecessarily and improperly denied the right to vote?

Considering the way this issue seems to routinely be handled by those who operate the Limited Conservatorship System in Los Angeles County, and based on the results of the sample of cases that I examined, it is reasonable to conclude that retention of voting rights is an exception to the rule of disqualification.

Based on all of the above, these are my preliminary findings, and my recommendations on how to better protect the right to vote of limited conservatees.

**Preliminary Findings**

1. Voting is a fundamental right for everyone, including people with developmental disabilities.

2. California law uses a capacity "test or device" to determine whether a conservatee will be allowed to vote. The test is whether the conservatee is capable of completing the voter registration form.

3. California's voting rights test for conservatees appears to violate federal voting rights laws.

4. Court-appointed attorneys who represent proposed conservatees are not being educated by training programs of the Los Angeles County Bar Association about federal voting rights laws and the voting rights of people with developmental disabilities. These attorneys are not advocating in court for their clients to retain the right to vote.

5. PVP attorneys are setting in motion the disqualification of their clients from voting by submitting reports that advise the court about the client's inability to complete a voter registration affidavit. PVP attorneys could leave this statement blank when they submit their form. They could decline to take any action that would be adverse to the voting rights of their clients. If an attorney can't say something to affirm a client's right to vote, the attorney should say nothing at all. "Do no harm."

6. Regional Centers are not educating parents about the voting rights of people with developmental disabilities. Regional Centers currently do not make recommendations to the Probate Court about the voting rights of proposed conservatees.

7. The Self Help Conservatorship Clinic operated by Bet Tzedek does not educate parents about the voting rights of proposed conservatees. It does not provide legal education about any aspect of the conservatorship process. It plays an important role in helping parents with the court process, but this role is strictly administrative (filling out forms) and does not get into criteria about capacity for voting.

8. Bet Tzedek could advise parents of the option of leaving the line in the form about voting blank. They do not have to render an opinion about whether a conservatee can or cannot complete a voter registration form. Petitioners can take the position that because they have not been educated about federal voting rights laws and ADA accommodation laws, they decline to venture an opinion on this issue.

9. Parents are not given educational materials by the courts or from any other source about the voting rights of proposed conservatees.

10. Court investigators are rendering opinions as to whether a proposed conservatee is or is not capable

of completing a voter registration form – without any apparent knowledge of federal voting rights laws or the right of conservatees to have someone help them fill out the form. Judges have apparently not been educated about the voting rights of limited conservatees or about the role of federal law in making determinations about qualifications to vote.

11. It is unknown how many of the 50,000 or more people with developmental disabilities who are currently under limited conservatorship in California have been disqualified to vote. There is a similar lack of information about the tens of thousands of limited conservatees in Los Angeles County.

12. Area Boards of the State Council on Developmental Disabilities have a legislative mandate to advocate for the civil rights of people with developmental disabilities. Protecting the voting rights of this population does not appear to be on the agenda of Area Boards or the State Council at this time.

13. The Client's Rights Advocates at Disability Rights California (operating under a contract with the State Department of Developmental Services) are not educating Regional Center clients about their voting rights. The Office of Client's Rights is not monitoring the actions of the Probate Court which is taking away the voting rights of Regional Center clients in a routine manner. It appears that voting rights is not an issue monitored by the State Department of Developmental Services.

**Preliminary Recommendations**

1. The California Secretary of State should issue an opinion on the right of limited conservatees to vote, including their right to assistance from someone in filling out a voter registration form.

2. The California Department of Justice should update its handbook on The Rights of Persons with Disabilities (2003) to include a section on the voting rights of persons with intellectual and developmental disabilities, including limited conservatees.

3. The Association of Regional Center Agencies (ARCA) should create an educational booklet for parents, and a separate brochure for clients, about the voting rights of people with developmental disabilities. This booklet and this brochure should be distributed to parents and clients at all Regional Centers when the client turns 18.

4. The Department of Developmental Services should update its contract with Disability Rights California to require their Office of Clients Rights, and the Client's Rights Advocates (CRA), to monitor probate cases in which a petition for conservatorship, or a report filed by an attorney or investigator, states that the proposed conservatee is unable to complete an affidavit of voter registration.

5. Bar Association programs that train attorneys who represent limited conservatees should include information about federal laws protecting the voting rights of people with developmental disabilities. Attorneys who represent such clients should advocate that their clients retain voting rights.

6. Judges should not declare a limited conservatee disqualified to vote without clear and convincing evidence, at a hearing, to support a finding that the conservatee is unable, with assistance from a person of their choice, to complete a voter registration form. Any ruling should take into consideration the provisions of federal law that prohibit the state from requiring conservatees to show that they can read, write, or understand any matter, and the provision that gives them the right to have assistance in voting.

7. Remedies should be developed by the California Attorney General, the Judicial Council, and the Secretary of State to reinstate the voting rights of limited conservatees whose voting rights were taken away in the past due to the mistake or neglect of Probate Court judges or court appointed attorneys.

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# Trauma-Informed Justice: A Necessary Paradigm Shift for the Limited Conservatorship System

by Thomas C. Coleman

"Trauma-informed justice" is a relatively new concept in the law. It has been discussed and applied in the context of criminal, family, and juvenile courts. Not so with respect to the administration of justice in probate courts.

Many mental health and substance abuse professionals have used a trauma-informed approach for some time now in counseling and therapy programs. It is in this context that much has been written on the subject.

"A *trauma-informed approach* refers to how a program, agency, organization, or community thinks about and responds to those who have experienced or may be at risk for experiencing trauma; it refers to a change in the organizational culture. In this approach, all components of the organization incorporate a thorough understanding of the prevalence and impact of trauma, the role that trauma plays, and the complex and varied paths in which people recover and heal from trauma." (Website, Substance Abuse and Mental Health Services Administration, "Trauma Definition: Part Two: A Trauma Informed Approach.")

Three elements occur in a trauma-informed approach: (1) realizing the prevalence of trauma in the population being served; (2) recognizing how trauma affects this population; and (3) responding by putting this knowledge into practice in the delivery of services. (SAMHSA, supra.)

A system that is trauma informed must realize the widespread impact of trauma, recognize the signs and symptoms of trauma, and fully integrate knowledge about trauma into policies, procedures, and practices.

The first step in delivering trauma-informed justice in the Limited Conservatorship System is for the participants – judges, attorneys, investigators, case workers, and program volunteers – to acknowledge that the majority of proposed conservatees are probably trauma victims.

As difficult as it may be to make this mental and emotional shift, participants also need to be aware that the trauma to these victims was likely caused by those who are close to them – members of their household, school, or day programs.

From what I have seen in the way the Limited Conservatorship System currently operates, there is an assumption by participants that all is well, that proposed conservatees have a normal life, and that proposed conservators have been doing a good job of raising their children. Research shows that such assumptions are not warranted.

The most recent report on abuse of people with disabilities was published by our own Disability and Abuse Project in 2013. (Website, Victims and Their Families Speak Out: A Report on the 2012 National Survey on Abuse of People with Disabilities.) More than 7,200 people throughout the nation responded to this survey, including thousands of people with disabilities and their families.

Over 70 percent of people with disabilities reported that they had been victims of abuse. More than 63 percent of family members said their loved one with a disability had been an abuse victim. Focusing exclusively on those with developmental disabilities, 62.5 percent of this group said they had experienced abuse of one type or another.

Of the various types of abuse, victims with disabilities reported verbal-emotional abuse (87.2%), physical abuse (50.6%), sexual abuse (41.6%),

neglect (37.3%), and financial abuse (31.5%).

Although this was not a random sample of the nation, the results of the survey certainly should be enough to cause concern within any system that is supposed to protect people with developmental disabilities. The Probate Court is such a system.

Dr. Nora J. Baladerian, Executive Director of the Disability and Abuse Project, was not surprised by the results of our national survey. She is a recognized expert on abuse and disability and lectures on the subject at professional conferences throughout the nation. She trains law enforcement personnel, psychologists, social workers, and service providers.

Dr. Baladerian cites retrospective studies that summarize the accounts of adults about their experiences of abuse as children. These studies show that one in four women, and one in six men, report that they were victims of sexual abuse as a child. (Centers for Disease Control and Prevention, 2006)

In another study of adults retrospectively reporting adverse childhood experiences, 25.9 percent of respondents reported verbal abuse as children, 14.8 percent reported physical abuse, and 12.2 percent reported sexual abuse. (Center for Disease Control and Prevention, 2009)

The findings of these studies are for the generic population. But what are the rates of abuse for people with developmental disabilities?

Dr. Baladerian refers to a study by her Canadian colleague, Dr. Dick Sobsey, whose research found that people with developmental disabilities (adults and children) are 4 to 10 times more likely to be victims of abuse than the generic population.

Other studies cited by The Arc of the United States confirm these high rates of abuse for children with disabilities, especially children with developmental disabilities. (Davis, Abuse of Children with Intellectual Disabilities.)

The data on perpetrators is also very instructive. Perpetrators of abuse are generally not strangers. Most often, they are people close to the victim.

In the generic population, more than 80 percent of child abusers were parents. (Office for Victims of Crime, United States Department of Justice, 2009) According to Dr. Baladerian, victims with developmental disabilities are most likely to be abused by household members.

This data alone should cause a paradigm shift in the Limited Conservatorship System, which currently assumes that proposed conservatees, as a class, are being treated well at home, and that proposed conservators, as a class, are treating their children well. Those assumptions are based on wishful thinking, not statistical probabilities.

I am not suggesting that judges, attorneys, and investigators should automatically view each parent or relative who wants to be a conservator as a likely abuser. But I am suggesting that the system should interact with a prospective conservator in a procedural context of caution and verification.

Perhaps 20 percent of generic children are victims of child abuse. Children with developmental disabilities are at least 3.4 times more likely to be victims than the generic child population. Do the math. A large majority of prospective limited conservatees may have been victims of sexual abuse.

Add to that the other forms of abuse, such as physical or emotional abuse. Then, just to be conservative, subtract a few percentage points. We still end up with 60 percent or more of prospective limited conservatees who may have been victims of abuse.

When we add the perpetrator statistics to our new understanding of child abuse dynamics, we should be stopped in our tracks. As a class, on the whole, and statistically speaking, a majority of would be conservators may have perpetrated abuse against the people whose life they are seeking to control in adulthood. Although this information is hard to digest, it requires a paradigm shift in the way the Limited Conservatorship System currently operates.

Questions begin to arise as to what changes should occur in policies and practices as a result of the paradigm shift from assuming that probably all is well to assuming that all may not be well. What should judges, attorneys, investigators, and service providers do differently with this newly acquired information about the likelihood that people with developmental disabilities have been abused?

A trauma-informed approach to the administration of justice in probate courts would require a complete review of all polices and practices, from top to bottom, from start to finish, in the Limited Conservatorship System. That is beyond the scope of this essay. But some aspects of the system that are crying out for attention do come to mind.

Let's look at form GC-314, the "Confidential Conservator Screening Form." This form must be completed by any person seeking to be appointed as a conservator. It must be filed with the petition.

A cursory review of this form suggests that it was originally designed to screen potential conservators for elderly conservatees in which cases the conservator is likely to be taking charge of the finances of the conservatee. So it contains questions asking if the proposed conservator has filed for bankruptcy protection. It also asks about arrests of the proposed conservator for theft, fraud, or taking of property.

Limited conservatorships are generally restricted to conservatorships of the person, not of the estate, of an adult with a developmental disability. So questions that pertain to the ability of a proposed conservator to manage finances have little relevance.

What is not asked by the screening form is very instructive. Proposed conservators are asked if they have ever been arrested for or charged with elder abuse or neglect. But they are not asked about arrests or prosecutions for dependent adult abuse or child abuse! They are also not asked if anyone in the household has been arrested for such offenses.

Proposed conservators are asked if they are required to register as a sex offender. But they are not asked if anyone else in the household is a registered sex offender. So the mother of a proposed conservatee can honestly answer "no" to this question, even though her husband, who lives in the home, is a registered sex offender. Since he is not seeking to be a conservator, this information is not provided to the court on form GC-314.

The form does ask if the proposed conservator has anyone living in the home who has a probation or parole officer assigned to him or her. A parent could answer "no" even though she has two adult sons living there who have a long history of felony convictions for drugs and violent crimes, but they are not currently on probation or parole.

Although the form does ask limited questions about bankruptcy proceedings and criminal proceedings, it asks nothing about juvenile court proceedings. So proposed conservators do not have to reveal that they have had a child taken away by the Juvenile Dependency Court (Children's Court). Nor do they have to reveal that they have had two children processed through Juvenile Delinquency Court – one for drug sales and the other for prostitution – and both of them spent time at the Youth Authority. Both children are now living in the same home with the parents and the proposed conservatee.

Since court investigators no longer conduct interviews, review records, and submit reports to the Probate Court in limited conservatorship cases, I have no idea of how these so-called "screening" forms are used. Presumably they are reviewed by the judge. Perhaps by the PVP attorney.

It would appear that this is a declaration system that relies on the proposed conservator to tell the truth. But even if the truth is told, critical information is missing due to the failure to ask the right questions, and to ask the questions of all people living in the household. Does the court run a criminal background check? Are the names of household members checked against the sex registration database? Are these names checked against the databases of Child Protective Services or Adult Protective Services? These questions are worthy of answers.

A so-called "protection" system that eliminates the use of court investigators to screen and evaluate petitions for limited conservatorships must be a system that assumes that child abuse or dependent adult abuse cases are rare, rather than probable.

A system that uses reports of court-appointed attorneys in lieu of reports of court investigators must be a system that has closed its eyes to statistics regarding the prevalence of abuse against people with developmental disabilities. Only a system in a state of disbelief could expect court-appointed attorneys to screen out potentially abusive conservators, and yet not train such attorneys about the prevalence and dynamics of abuse.

Only a system in denial could expect these attorneys to be the front line of defense against the appointment of dangerous conservators, and yet not train them with the special skills needed to interview people with developmental disabilities. Only such a system would fail to emphasize the importance of talking personally and privately with all relatives of the first degree in order to find any dissenting views in the family about how wonderful the proposed conservator is.

A trauma-informed conservatorship system would not only require court investigators in every new case, it would also train them properly and thoroughly so they would have a better chance of identifying risky applicants. Such a system would also require court-appointed attorneys to acquire interviewing skills appropriate to the task, to interview proposed conservatees in a private setting away from their parents, to review all Regional Center records and not just the three-page report prepared for the court, and to run a criminal background check on everyone who lives in the household.

In a trauma-informed conservatorship system, the staff and volunteers at Bet Tzedek Legal Services would not assume that parents who come to the Self Help Clinic are wonderful people who should have all "seven powers" granted to them. They should be aware that a significant portion of those who attend the clinic either are or will be perpetrators of abuse.

If those who operate the training programs of the County Bar Association were trauma-informed educators, they would act differently when they select topics and speakers for PVP training programs.

Trauma-informed training coordinators would provide more seminars because of the need to include much more information than is currently transmitted during the few training programs that are offered now. They would include speakers on the dynamics of each type of disability and how to interview people who have each type of disability.

Seminars would include a presentation on the prevalence of abuse against people with developmental disabilities and who the likely perpetrators are. They would also include requirements of the Americans with Disabilities Act and what the courts and attorneys must do to accommodate the special needs of clients with disabilities.

Court-appointed attorneys would be informed that most cases of child abuse or dependent adult abuse are not reported. In many cases, the victim is too embarrassed, or too afraid of consequences, or thinks they will not be believed.

The fact that no report has been made to Child Protective Services or Adult Protective Services does not mean that abuse has not occurred. Such knowledge would inform the actions of the attorneys, prompting them to do more thorough investigations and not to be distracted by smooth-talking and friendly-appearing proposed conservators. A trauma-informed PVP training session would advise court-appointed attorneys not to be fooled by pleasant appearances. Too much is at stake.

Many other changes in the Limited Conservatorship System would be required if the probate court shifts paradigms from the current model that assumes benevolence to one that is trauma informed. Such a trauma-informed justice system would operate with more caution and scrutiny. Thousands of people with developmental disabilities would then have a greater degree of protection from the probate court.

# Trauma Informed Politics:

## An Inconvenient Truth About Disability and Abuse

by Thomas F. Coleman, J.D.

Guardianship procedures for adults with intellectual and developmental disabilities have been operating on "auto pilot" in most states for many years, perhaps decades.

Participants in these guardianship systems – judges, attorneys, investigators, and conservators – all have been playing their designated roles as though they are actors in a movie. They have been reading from assigned scripts without questioning whether the language is appropriate or the plot should be changed.

In most cases, the "guardianship movie" has no director. It plays over and over again without any critical reviews.

This scenario is beginning to change. Some members of the audience are asking questions and leveling criticisms. There is a growing chorus of voices calling for reform. In some states, task forces have been formed to analyze the guardianship system.

Organizations advocating for disability rights see guardianship as a form of governmental overreach and are starting to promote alternatives such as "supported decision making." Others are promoting non-judicial forms of substituted decision making – especially for medical decisions – such as simplified power-of-attorney forms intended for use by people with intellectual disabilities.

Guardianship reform and alternatives to guardianship are now entering the political arena. For example, a bill to authorize a simplified medical power of attorney was introduced in Nevada in February 2015..

A recently drafted "Supported Health Care Decision Making Act" is being made ready for its debut on the national political stage. The Arc of California is considering whether to sponsor such a bill in the California Legislature. It is just a matter of time before bills for guardianship reform and medical alternatives to guardianship are introduced in state legislatures everywhere.

A "model bill" for medical supported decision making agreements came to the attention of Spectrum Institute a few months ago. We were very concerned that it did not include protections against possible abuse, exploitation, and undue influence. Also, when someone sent us a copy of the Nevada bill (AB 128) we noticed that it also lacked sufficient protections to reduce the risks that may cause harm to someone who is especially vulnerable.

Disability rights groups and disability services agencies were endorsing the Nevada power-of-attorney bill and seemed enthralled by the original version of a model bill for medical supported decision making. We weren't.

We wondered how advocates for people with intellectual and developmental disabilities could support a bill that did not include sufficient protections for this susceptible population. The parents and advocates promoting such measures are good people. Many are working for organizations with laudable mission statements.

Why were we seeing legislative flaws that they did not? Why were they jumping on an advocacy bandwagon that, from our perspective, needed a navigational correction to put it on the right course?

After much soul searching and discussion, we believe we have found the answer to these questions. We see things that others don't because we subscribe to a process we call "trauma informed politics."

To be "trauma informed" a procedure or practice must adopt a perspective that people find to be "an inconvenient truth" and therefore are unwilling to adopt. The truth is that a large percentage of people with intellectual and developmental disabilities are victims of abuse.

Adopting this perspective is much like using a night vision device. Without such a device, you may overlook things that exist but are not readily visible due to the low level of light – things that can be hiding in plain sight. Using such a device, you may be able to see things that are otherwise invisible to the unaided eye.

By working for the last few years with Dr. Nora J. Baladerian, a clinical psychologist with expertise in the field of disability and abuse, I have learned that abuse of people with developmental disabilities is extensive. Most cases of abuse are not reported. With the help of "night vision" data from surveys and studies of disability and abuse, we know that abuse exists at a level that most people do not want to acknowledge.

After hearing about newly emerging concepts of "trauma informed care" and "trauma informed therapy," I wrote an essay about "trauma informed justice." I argued that participants in the guardianship process – attorneys, investigators, and judges – should assume that a proposed ward or conservatee may be a victim of abuse. Don't assume that a proposed guardian is a "good guy."

To my amazement, when I looked at reports and surveys on the prevalence of abuse to people with disabilities, I learned the inconvenient truth about disability and abuse – by the time they become adults, most people with disabilities have been victims of abuse. This data has been widely available for decades. For too many people, the statistics have been seen but not acknowledged.

Another uncomfortable fact is that most perpetrators of abuse of people with disabilities are in the victim's immediate circle of support – a parent, household member, relative, caregiver, or service provider. This fact should have major policy implications.

Once I knew these facts, I started to use "night vision" techniques to scrutinize policies and practices that affect people with disabilities. Using this knowledge about the prevalence of abuse, my political sensibility and legal perception were different than before. I started to notice flaws that I previously overlooked, defects that other legal or political colleagues did not see.

I used my newly acquired abuse awareness as I reviewed the model legislation for medical supported decision making. Because of enhanced perception, I was able to detect structural flaws that were not noticed by those who drafted the bill, despite their good intentions to promote independence and self determination for people with intellectual and developmental disabilities.

Dr. Baladerian and I both used such techniques to scrutinize the Nevada power-of-attorney bill. We used this approach as we reviewed the testimony of witnesses who supported the legislation. We suspected that legislators who received the testimony were not aware that most adults with intellectual disabilities have been victims of abuse and did not know who likely perpetrators are. As a result, legislators may have never considered using abuse awareness glasses to review the bill.

After our intervention, the Nevada bill was put on hold. It is being rewritten by the proponents. Whether they acknowledge the reality that abuse is common, and amend the bill to include necessary protections or even take a different approach entirely, remains to be seen.

We were fortunate that one of the primary proponents of the model legislation for supported medical decision making agreements was open to suggestions. He reviewed a framework we developed that included the necessary ingredients for a trauma informed law and the model bill was amended. Now the process of trauma informed politics allows us to endorse the amended bill.

Once participants in the political arena are aware of the high rate of abuse of people with developmental disabilities, there should be less resistance to acknowledging other facts that also may be unpleasant but true.

Some people with disabilities lack the capacity to give informed medical consent and in such cases a form of substituted decision making is appropriate. That may be a guardianship, even if only for medical decisions.

Some people with disabilities lack the capacity to enter into a contract – which is what a medical power of attorney is and what a supported decision making agreement is. If such capacity is lacking, then these alternatives to guardianship are not appropriate.

A significant percentage of parents are not "good guys." Such parents may not go to public policy conferences or contact legislators to oppose funding cuts to disability services agencies. Politically active parents are the visible tip of the larger parental iceberg. Unnoticed, but there anyway, are parents who should not be granted authority by a power of attorney and should not be appointed as a guardian or as a conservator.

New legal proposals should be scrutinized for their potential to increase the risk of abuse and for whether they have adequate safeguards against undue influence. Supported decision making may be fine for some people with disabilities, but it is not a "magic wand" that can be used to make the lack of capacity of others disappear.

The situation of each person will always need to be examined carefully to determine if capacity, abuse, and undue influence exist or not. The political process should acknowledge this fact, inconvenient or not. ◊◊◊

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Daily Journal

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# Conservatorships reviewed

*Judicial committee mulls whether to recommend that the state revamp training*

By Paul Jones
Daily Journal Staff Writer

SAN FRANCISCO — A judicial committee may recommend the state revamp judge and attorney training in the wake of a disability rights group's allegations of problems with how California courts award parents and guardians control over developmentally disabled people.

That's the potential upshot of a meeting Friday by the Judicial Council's Probate and Mental Health Advisory Committee, where judges heard from attorney and disability rights advocate Thomas F. Coleman of the nonprofit Disability and Abuse Project. Coleman said he's uncovered numerous problems with the handling of conservatorship cases, and he wants a special task force to investigate alleged conflicts of interest in the manner in which courts treat developmentally disabled parties.

Conservatorship cases involve courts granting legal authority to guardians to take control over elements of a person's life, such as medical and financial matters. Developmentally disabled people are often subject to conservatorship cases when they reach legal adulthood and parents seek to continue caring for them. But some disability rights advocates, including Coleman's group, complain disabled people's rights are often undermined in court.

Specifically, Coleman claimed he has found problems in Los Angeles County Superior Court that include the court's decision to end the use of independent investigators who verify if a developmentally disabled person needs to be taken care of, and to what extent. He also said attorneys who are hired by courts to represent disabled parties are pushed to provide sensitive information about their clients to the court in order to speedily resolve conservatorship matters.

"Any attorney is supposed to represent their clients' wishes and protect their clients' rights. These attorneys don't do that," he said. "A local court rule tells them they have a secondary duty ... to help the court resolve the cases ... They gather information about their clients' strengths, weaknesses, abilities and inabilities" and then present potentially damaging information to the court.

Statewide, Coleman said regional centers set up to assist disabled people are poorly equipped to provide important information about parties in conservatorship cases.

Contra Costa County Superior Court Judge John Sugiyama chairs the Probate and Mental Health Advisory Committee. Despite the Disability and Abuse Project's goal for a statewide task force to review court practices in conservatorship cases, Sugiyama and other judges said the money wasn't available, and indicated the committee wouldn't recommend such a task force to the Judicial Council. However, Sugiyama said he wanted to pursue the possibility of altering training for judges and attorneys to highlight some of the issues raised by Coleman.

"As you're aware, being a lawyer facing courtrooms that are being darkened, staff members that are being laid off, it's going to be very difficult for the judicial branch to find money to support a task force," Sugiyama said, urging Coleman to pursue the idea with lawmakers.

However, "This is what I suggest — one thing we can do immediately pertains to the training of judicial officers and court-appointed counsel," Sugiyama said. "That is something we can enforce. We can impose the requirement on judges overseeing limited conservatorships and court-appointed counsel."

The commission members also suggested pursuing new standards for regional centers, whose reports can influence the outcome of conservatorship cases.

Coleman said he'd work with the committee to develop changes that could help address some of the issues raised by his group. That could lead to the judicial branch formally enacting new training requirements to improve protection of disabled parties' rights.

However, outside of the meeting he said he still wants a broader review of the conservatorship system.

"I feel that they are sincerely interested in seeing reform occur in some areas," he said. But "the powers that be should be able to find the money to staff such a task force. A comprehensive review is long overdue and needed."

In 2006 the judicial branch created a task force to look into general conservatorships, which mainly involve senior citizens, he said.

Coleman said he and the Disability and Abuse Project were previously successful in pushing for changes to state law that clarified a disabled person's right to vote couldn't be removed simply because they required assistance filling out a voter registration form. AB 1311 was signed by Gov. Jerry Brown earlier this year. The group has also filed a Department of Justice complaint more generally alleging the state's voter competency laws amount to literacy tests. Coleman said he might consider pursuing a Department of Justice complaint if the conservatorship system isn't more broadly reviewed.

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# Reform Long Overdue for State Conservatorship Process

By Thomas F. Coleman

The conservatorship process for adults with developmental disabilities is broken. There are about 40,000 such adults currently in conservatorships in California, and about 5,000 new cases are added to the system each year. There are many systemic and operational problems with the processing of these cases.

It's not too soon to get the number crunchers into the conversation about "supported decision-making" and guardianship reform. The best laid plans by policy people and rights advocates never gain real traction without also having financial analysts in the mix too.

Proponents of supported decision making have been focusing on issues of self determination and equal rights for people with intellectual and developmental disabilities. The idea is that, with proper support, people with disabilities have the capacity to make their own decisions without guardianships.

Those proposing reform of adult guardianships for people with developmental disabilities, known in California as limited conservatorships, have been complaining that the system has structural flaws and operational deficiencies of a magnitude that violate constitutional guarantees and statutory requirements.


The conversations about supported decision-making and guardianship reform are now moving from academic discussions and idealistic dialogues among like-minded individuals into the realm of politics, which adds another set of considerations.

The Disability and Abuse Project has been in contact with the Judicial Council of California – the state agency that makes rules, develops forms, and provides education to judges and attorneys. That agency is only now realizing the seriousness of the many problems existing within the limited conservatorship system.

To address these problems, the Judicial Council has designated two advisory committees to work with its educational institute to discuss possible training programs for the judges and attorneys who process limited conservatorship cases. This approach is like painting an airplane that has major mechanical problems. In the end, the plane looks nice, but the unfixed defects continue to place passengers at risk.

Proponents of supported decision-making and conservatorship reform should insist that defective parts be replaced and that periodic inspections be done by trained mechanics. Pilots and navigators also need to receive training, plus the entire team must be accountable to someone.

Without systemic changes in policies and procedures, and without ongoing supervision and routine monitoring, the educational programs under discussion by the Judicial Council will be little more than cosmetic.

Budget planners need to have a seat at the table along with judicial overseers. Reform advocates also need to be involved in the process of creating what should be meaningful and lasting reform. Ongoing discussions and planning should be inclusive and transparent.

Evaluating supported decision-making as a less restrictive alternative in thousands of individual cases will cost money. So will the processing of conservatorship cases if supported decision-making is not adequate to protect vulnerable adults.

Insuring that proposed conservatees receive equal access to justice – as required by the Americans with Disabilities Act and by the Fourteenth Amendment – will cost money too.

Budgets will need to be increased for agencies that play or should play a role in the limited conservatorship system. At the state level, that would include the Judicial Council, the Department of Developmental Services, and the system of Regional Centers, as well as the federally-funded Disability Rights California.

At the local level, superior courts that employ judges and investigators will be financially affected. County governments pay the fees of court-appointed attorneys and public defenders. So room should be made at the table for presiding judges and county supervisors.

There will come a time for educational programs – but only *after* decisions have been made about systemic changes and their estimated costs. First things first. ♢

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Daily Journal

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# Legal System Without Appeals Should Raise Eyebrows

By Thomas F. Coleman

Our legal system presupposes a considerable number of contested hearings and a fair number of appeals. Appellate courts play a vital role in keeping the system honest.

Published appellate decisions create a body of case law that instructs trial judges and the entire legal profession about the correct interpretation of statutes and constitutional mandates. Appeals are essential to the life blood of the legal system – judicial precedent.

Having served as a court-appointed appellate attorney for over 15 years, I know the critical role that appellate courts play in monitoring the activities of trial judges and attorneys. Alleged errors are scrutinized on appeal and the opinion of the appellate court determines whether the rules were violated by the participants in the trial court.

Knowing that proceedings are being recorded and might be appealed can have a prophylactic effect. People are more careful when they believe their actions may been seen by others, especially by people in higher authority. The reverse is also true. When people believe they are not being watched or when they think their actions are not subject to review, they act differently.


I have looked at statistics published by the Los Angeles Superior Court and by the Judicial Council of California. Annual reports verify that contested hearings or trials occur in large numbers on virtually every subject matter and every type of case. Statistics also verify that the Courts of Appeal in California are kept busy deciding appeals from judgments involving child custody disputes, divorces, civil litigation, wills and estates, juvenile dependency, juvenile delinquency and criminal convictions.

Contested hearings and appeals should not only be expected, they should be valued. Appeals correct policy defects and operational flaws. They instruct judges and attorneys on how to conduct themselves within the law.

Now comes the kicker. There is a category of cases that has almost no contested hearings and virtually no appeals – limited conservatorship proceedings for adults with intellectual and developmental disabilities. Some 5,000 of these cases are processed in California each year, with 1,200 of them in Los Angeles County alone.

I found that, at least in Los Angeles, these cases are handled with "assembly line" efficiency. Petitions are filed to take away the rights of adults to make decisions regarding finances, residence, medical care, social contacts, and sexual relations. Opposition is rare.

Court-appointed attorneys for proposed conservatees are given a "dual role" by local court rules. One duty is to help the court resolve the case. The attorneys seem to be very good in that role, and not so good at defending the rights of the clients, since nearly all cases are settled with the clients losing their decision-making rights.

These attorneys *never* file an appeal for their clients, so the Court of Appeal never sees how the judges or the attorneys handle these limited conservatorship cases. The probate court judges who process these cases know their actions will not be reviewed on appeal.

A probate judge recently told a group of court-appointed attorneys at a training last year that they are not required to advise clients about their right to appeal. Attorneys are usually released as counsel when the conservatorship order is granted. Clients, therefore, have no attorney to assist them in filing an appeal.

The California Appellate Project states it has never seen an appeal by a limited conservatee. A search of case law shows there are no published opinions deciding appeals filed by limited conservatees.

Show me a legal system that has no appeals and I will show you a rigged system. Consider me a whistle-blower if you wish, but this cannot continue. Something must be done.

One solution would be to pass a bill clarifying that a "next friend" can file an appeal for someone who lacks competency to do it for himself or herself. Such a proposal, known as Gregory's Law, is being circulated now.

Gregory's Law would allow a relative or friend to file a "next friend" appeal to challenge the orders of judges or the conduct of appointed attorneys that infringe the rights of limited conservatees. Clarification is needed because a published opinion (Conservatorship of Gregory D. 214 Cal.App.4th 62 (2013)) declared that only the limited conservatee may appeal to complain about these issues.

That creates a Catch 22 for limited conservatees. Because of the nature of their disabilities, they lack the understanding of how to appeal. Their appointed attorneys won't appeal because it is they who surrendered the rights of their clients. So ongoing violations of the rights of people with disabilities are never reviewed on appeal.

The best solution would be for attorneys to serve their primary duty, defending the rights of their clients. This should be their only focus. The court rule giving them a secondary duty to help settle cases should be eliminated.

*Thomas F. Coleman is the legal director of the Disability and Abuse Project of Spectrum Institute.*

Daily Journal

Published in California's largest legal news provider on February 10, 2015.

**How Many DDS Consumers Are Conserved and Who Are Their Conservators?**

In considering the extent of conservatorship of adults with I/DD in California and the impact of conservatorship on healthcare decision-making, it is useful to quantify the number of persons under conservatorship, and who serves as conservators. The California Department of Developmental Services provides the following information regarding the legal status of consumers in its system:

**Figure 2: Legal Status of DDS Consumers**

| Legal Status | Age 18+ yrs |
|---|---|
| No Conservator | 100,979 |
| Parent or Relative | 25,500 |
| Has Conservator - not DDS | 11,597 |
| Has Conservator - not DDS (Public Guardian) | 871 |
| Other (Has Conservator, Such as Private Conservator) | 791 |
| Ward of Court | 522 |
| Director of DDS | 511 |
| Unknown | 344 |
| Regional Center Director | 168 |
| Miscoded | 1 |
| **TOTAL ADULT CLIENTS** | **141,284** |

*Source: California Department of Developmental Services, July 2014*

# About 40,000 Adults with Intellectual Disabilities Have Open Conservatorship Cases in California

*Information Taken from This Report*:

## THINKING AHEAD MATTERS

*Supporting and Improving Healthcare Decision-Making and End-Of-Life Planning for People with Intellectual and Developmental Disabilities*

August 2014
*Updated January 2015*

Laurel A. Mildred, MSW
*Mildred Consulting*

COALITION FOR COMPASSIONATE CARE OF CALIFORNIA

1331 Garden Highway, Suite 100
Sacramento, CA 95833
CoalitionCCC.org

# Response of DDS to Public Records Request by Spectrum Institute

Total adults served by DDS . . . . . 145,414
Those who are not adult conservatees (Status 5 and Status N) . . . 104,404
Total adults with I/DD who are conservatees . . . . . 41,010

Los Angeles County DDS clients who are conservatees . . . . . 12,688 (30.9%)
(ELARC + FDLRC + HRC + NLACRC + SCLARC + SGPRC + WRC)

**Adult Regional Center Consumers (Age 18 and Up)**
**Client Master File Data as of December 1, 2014**

Request 1: The number of adult clients served by each regional center.
Request 2: The number of adult clients served by each regional center who are conservatees.

*See table below and corresponding key on the following page.*

| Regional Center | Legal Status 2 | Legal Status 3 | Legal Status 4 | Legal Status 5 | Legal Status 7 | Legal Status 9 | Legal Status N | Legal Status R | Other | Grand Total |
|---|---|---|---|---|---|---|---|---|---|---|
| ACRC | 125 | 769 | 54 | 43 | 3 | 42 | 7,392 | 2,295 | 67 | 10,790 |
| CVRC | 59 | 739 | 18 | 24 | 2 | 8 | 7,216 | 837 | 40 | 8,943 |
| ELARC | 39 | 425 | 8 | 15 | 21 | 15 | 2,752 | 1,506 | 24 | 4,805 |
| FDLRC | 3 | 246 | 15 | 14 | 49 | 4 | 2,309 | 1,163 | 8 | 3,811 |
| FNRC | 39 | 733 | 6 | 8 | 1 | 1 | 2,959 | 460 | 29 | 4,236 |
| GGRC | 40 | 602 | 10 | 15 | - | 7 | 3,846 | 535 | 35 | 5,090 |
| HRC | 24 | 473 | 42 | 25 | 1 | 19 | 3,788 | 1,322 | 16 | 5,710 |
| IRC | 59 | 224 | 21 | 53 | 49 | 15 | 11,445 | 3,272 | 44 | 15,182 |
| KRC | 4 | 329 | 27 | 9 | 9 | 4 | 3,447 | 251 | 37 | 4,117 |
| NBRC | 21 | 590 | 13 | 22 | 1 | 19 | 3,789 | 306 | 17 | 4,778 |
| NLACRC | 11 | 837 | 23 | 33 | 2 | 8 | 7,090 | 1,262 | 35 | 9,301 |
| RCEB | 53 | 452 | 27 | 45 | 7 | 19 | 6,127 | 2,899 | 74 | 9,703 |
| RCOC | 8 | 1,359 | 34 | 21 | - | - | 8,056 | 6 | 2 | 9,486 |
| RCRC | 62 | 195 | - | 3 | 2 | 15 | 1,479 | 245 | 15 | 2,016 |
| SARC | 51 | 974 | 25 | 15 | 4 | 79 | 4,575 | 1,898 | 25 | 7,646 |
| SCLARC | 81 | 414 | 45 | 60 | 2 | 28 | 4,599 | 910 | 40 | 6,179 |
| SDRC | 18 | 1,639 | 62 | 29 | - | 36 | 7,893 | 1,787 | 10 | 11,474 |
| SGPRC | 27 | 701 | 37 | 43 | 5 | - | 4,699 | 986 | 22 | 6,520 |
| TCRC | 47 | 449 | 25 | 6 | 1 | 8 | 4,150 | 1,312 | 37 | 6,035 |
| VMRC | 33 | 249 | 13 | 18 | - | 9 | 4,292 | 1,012 | 177 | 5,803 |
| WRC | 54 | 182 | 15 | 26 | 17 | 17 | 1,974 | 1,487 | 17 | 3,789 |
| **Grand Total** | **858** | **12,581** | **520** | **527** | **176** | **353** | **103,877** | **25,751** | **771** | **145,414** |

**Legal Status Key**

*'Legal Status' answers the question: "Does the consumer have a judicially appointed guardian or conservator?"*

| Legal Status | Description | Definition |
|---|---|---|
| 2 | Public Guardian | The public guardian for the county of residence of the consumer is the consumer's conservator. (Probate Code sections 2920, 2921) |
| 3 | Has Conservator -- Not DDS | The consumer has a conservator who is not the director of the Department of Developmental Services (DDS). |
| 4 | Director of DDS | The director of DDS is appointed as either guardian or conservator of the consumer and/or estate of a consumer. (Health and Safety Code sections 416, 416.5, 416.9) |
| 5 | Court (dependent child) | A minor consumer who is adjudged by the court to be a dependent of the court because of parental issues or the child's criminal conduct. (Welfare and Institutions Code section 300 or 601) |
| 7 | Regional Center Director | The director of a regional center that is the actual probate conservator or guardian of a consumer, as contrasted with being delegated the responsibility of performing conservatorship duties by DDS when DDS is the actual conservator. (Health and Safety Code section 416.19, Probate Code sections 1500, 1514, 1801, 2351.5) |
| 9 | Unknown | |
| N | No Guardian/Conservator | The consumer does not have a judicially appointed guardian or conservator. |
| R | Consumer's Parent or Relative | A family member of the consumer has been appointed probate conservator (for an adult) or guardian (for a minor). (Probate Code sections 1500, 1514, 1801, 2351.5) |
| Other | | The consumer has a guardian or conservator other than the possibilities above, such as a private conservator. |

Disability & Abuse Project

April 9, 2014

Hon. Hanna-Beth Jackson
State Senate
Sacramento, California

Re: The Need for Legislative Audit and Oversight of
the Limited Conservatorship System in California

Dear Senator Jackson:

I am writing to you in your capacity as Chair of the Senate Judiciary Committee. That committee's jurisdiction includes legislation affecting or revising the Probate Code.

The Probate Code is one of the statutory schemes that established a Limited Conservatorship System in California – for the protection of adults with developmental disabilities. That system is operated by the Judicial Branch of government. This is little, if any, monitoring of this system or participation in this system by agencies of the Executive Branch.

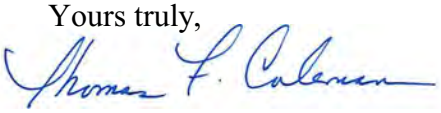
Three separate cases came to the attention of our Project that prompted us to examine how the Limited Conservatorship System is operating. We conducted a "mini audit" of that system in Los Angeles County. Our findings are contained in a Pre-Conference Report that will be distributed to various agencies and individuals prior to a series of four conferences we will conduct to examine flaws in the system and identify ways to remedy those flaws.

I am taking the liberty of sending this Pre-Conference Report (and the agendas of the four conferences) to you for review. I believe that you, as someone who cares deeply about protecting the rights of vulnerable classes of people, will be surprised and disappointed by what you read.

Perhaps you would like to send someone from the Judiciary Committee staff to attend some or all of these conferences as an observer, so you can get a first hand report of the situation.

I would be pleased to speak with you or your staff at any time about this ongoing problem.

Yours truly,



Thomas F. Coleman
Legal Director
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Disability & Abuse Project

April 10, 2014

Hon. Bob Wieckowski
State Assembly
Sacramento, California

Re: The Need for Legislative Audit and Oversight of
the Limited Conservatorship System in California

Dear Assemblyman Weickowski:

I am writing to you in your capacity as Chair of the Assembly Judiciary Committee. I believe that your committee has jurisdiction over legislation affecting or revising the Probate Code.

The Probate Code is one of the statutory schemes that established a Limited Conservatorship System in California – for the protection of adults with developmental disabilities. That system is operated by the Judicial Branch of government. There is little, if any, monitoring of this system or participation in this system by agencies of the Executive Branch.

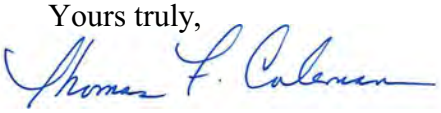
Three separate cases came to the attention of our Project that prompted us to examine how the Limited Conservatorship System is operating. We conducted a "mini audit" of that system in Los Angeles County. Our findings are contained in a Pre-Conference Report that will be distributed to various agencies and individuals prior to a series of four conferences we will conduct to examine flaws in the system and identify ways to remedy those flaws.

I am taking the liberty of sending this Pre-Conference Report (and the agendas of the four conferences) to you for review. I believe that you will be surprised and disappointed by what you read. I am also including our Preliminary Findings as a separate document.

Perhaps you would like to send someone from the Judiciary Committee staff to attend some or all of these conferences as an observer, so you can get a first hand report of the situation.

I would be pleased to speak with you or your staff at any time about this ongoing problem.

Yours truly,



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May 15, 2014

Hon. Michael Levanas
Presiding Judge, Probate Department
Los Angeles Superior Court
111 N. Hill Street
Los Angeles, CA 90012

Re: The Need for Comprehensive Reform of the Limited Conservatorship System

Dear Judge Levanas,

On February 18, 2014, I met with you to discuss the concerns of our Project regarding the manner in which the Probate Court processes and adjudicates limited conservatorship cases. I shared with you an essay that I had written which identified problems with the "Limited Conservatorship System." As you may recall, I mentioned to you that we became involved with this system as a result of pleas for help being directed to us in three separate cases. As we looked into these cases, we realized the problems were systemic in nature.

I have continued to conduct research into this system in the weeks and months following our meeting. I reviewed online dockets for scores of cases and reviewed dozens of documents from case files on the court's computer system at the courthouse. I interviewed court-appointed attorneys and attended a training seminar for PVP attorneys. I attended a presentation given by Bet Tzedek Legal Services at the Beverly Hills Bar Association. I also studied relevant constitutional law, statutes, and court rules.

Our Project held a conference on the Limited Conservatorship System on May 9, 2014, which was attended by family members in three cases, a conservatorship attorney, Regional Center workers, a private fiduciary, a public guardian, and a range of other interested parties. A conference on violations of the voting rights of limited conservatees will be held on June 20, thus a copy of this letter is being sent to the Secretary of State.

Our Project is conducting the most in-depth analysis of the Limited Conservatorship System that has ever been done in California. Our preliminary findings are quite disturbing. From our perspective as advocates for people with developmental disabilities, we see routine and systematic violations of their rights by the Limited Conservatorship System and its various components. We see the need for *comprehensive* reform – changes in both the policies and practices of judges, court staff, attorneys, the bar association, Regional Centers, and other nonprofit organizations that are or should be involved in this system. We also see the need for more legislative oversight, as well as additional legislative appropriations to properly fund the system.

While our initial focus has been on practices in Los Angeles County, we believe this is a statewide problem since state statutes, state funding, and statewide court rules are contributing to the problems we have identified. As a result, we see the need for the Judicial Council, the State Department of Developmental Services, the California Legislature, and the Attorney General to be involved in formulating solutions.

We invite you to meet with us to discuss our preliminary report, *Justice Denied,* a copy of which is enclosed. We also look forward to having productive conversations with other officials and agencies at the state level.

cc: Judicial Council
Department of Developmental Services
Assembly Judiciary Committee
Senate Judiciary Committee
Attorney General
Secretary of State

Very truly yours,

Thomas F. Coleman

THOMAS F. COLEMAN
Legal Director

Disability & Abuse Project

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May 15, 2014

Hon. Tani G. Cantil-Sakauye
Chief Justice of California
350 McAllister Street
San Francisco, CA 94102

Re: Request for Judicial Council to Convene a Task Force on Limited Conservatorships

Dear Chief Justice:

I am writing to you in your capacity as Chair of the Judicial Council.

In January 2006 Chief Justice Ronald M. George convened a Probate Conservatorship Task Force and directed it to conduct a comprehensive review of the probate conservatorship system in California. The actions of the Chief Justice were prompted, in large measure, by a series of articles published by the Los Angeles Times that called public attention to major problems with the general conservatorship system.

The stories published by the Los Angeles Times also caught the attention of the California Legislature. Hearings were conducted and new legislation was enacted.

The actions of the legislative and judicial branches focused almost entirely on general conservatorships. No particular attention was given to limited conservatorships for people with developmental disabilities.

The time has come for a comprehensive review of the limited conservatorship system. Our Project has done its own "mini-audit" of this system as it is operated by the Los Angeles Superior Court. Our preliminary findings have caused us to convene a conference on May 9, 2014, and another is scheduled for June 20. A copy of our preliminary report, *Justice Denied*, is enclosed. A copy is being sent to all members of the Judicial Council. We are also reaching out to the Legislature and to other statewide elected officials.

We do not know how limited conservatorships are processed in other counties, but if what is happening in the largest Superior Court in the state is any indication, there is a major statewide deprivation of justice that is happening to a very vulnerable population – one that is unable to adequately advocate for itself. If Los Angeles County is unique, then thousands of people with disabilities in that jurisdiction are being deprived of equal protection of the law (in addition to violations of other constitutional and civil rights).

Our Project is calling on you to convene a Task Force on Limited Conservatorships to review the limited conservatorship system statewide, with a special focus on Los Angeles County. Members of the Task Force should include a wide range of perspectives, from inside and outside of the legal profession. My colleagues and I at the Disability and Abuse Project are willing to be of assistance. We have considerable experience in working with study commissions and task forces on matters involving policy and law reform.

What we do to solve these problems will affect tens of thousands of existing limited conservatees in California and thousands more whose cases are processed each year. Therefore, we should act with all deliberate speed. I look forward to your reply.

cc: Judicial Council members

Very truly yours,

Thomas F Coleman

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Legal Director
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September 22, 2014

Hon. Tani G. Cantil-Sakauye
Chief Justice of California
350 McAllister Street
San Francisco, CA 94102

Re: Follow up to prior letters

Dear Chief Justice:

I am writing to you in your capacity as Chair of the Judicial Council.

On May 15, 2014, I sent you a report, *Justice Denied*, and made a request that the Judicial Council convene a Task Force on Limited Conservatorships to review the Limited Conservatorship System statewide, with a special focus on Los Angeles County where several major deficiencies have been identified.

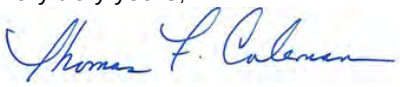
You referred the request to Justice Harry Hull, Chair of the Rules Committee. In turn, he referred it to the Probate and Mental Health Advisory Committee. In turn, that Committee referred it to a subcommittee for study, with directions to report back to the Committee in November. Our report and recommendation are now buried deep in the judicial bureaucracy. The way in which this is being handled is in stark contrast to the "fast track" action that was taken by the Judicial Council when major flaws in the General Conservatorship System were exposed in 2006.

Since I wrote you on May 15, things are getting worse, not better, with regards to the processing of limited conservatorship cases in Los Angeles. A voting rights complaint has been filed with the United States Department of Justice and that investigation is pending. We recently released a report on the deficiencies in the performance of court-appointed (PVP) attorneys in Los Angeles, with recommendations on how that can and should be improved. (See *Strategic Guide* which is enclosed.)

On September 13, 2014, Dr. Nora J. Baladerian and I attended a Mandatory Training for PVP Attorneys, conducted by the Probate Court with the assistance of the local Bar Association. The seminar was a complete failure in that topics advertised to be covered were not, speakers selected did not have the necessary credentials and experience to impart the information the attorneys needed, and too much misinformation and contradictory information was given to those who attended the training. I am enclosed my review of that training. It makes very specific criticisms, describes what a proper seminar would have included, and contains a wealth of citations and resources that could help PVP attorneys provide effective representation of counsel to clients with developmental disabilities (if they ever receive the review).

We are disappointed that things are not improving here in Los Angeles and that members of this vulnerable class of people continue to be denied equal justice in a system that is routinely violating their statutory and constitutional rights. We implore you to speed up the process of answering our request for a Task Force.

Very truly yours,



THOMAS F. COLEMAN
Legal Director
(818) 482-4485 / tomcoleman@earthlink.net

cc: Hon. David S. Wesley
Justice Harry E. Hull

Disability & Abuse Project

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June 23, 2014

Hon. Tani G. Cantil-Sakauye
Chief Justice of California
350 McAllister Street
San Francisco, CA 94102

Re: Information on supported decision making and
analysis of calls to repeal limited conservatorship laws

Dear Chief Justice:

I am writing to you in your capacity as Chair of the Judicial Council. This is a follow up to my previous letters to you dated May 15, 2014 and June 15, 2014, regarding limited conservatorships in California.

There are some organizations in California that are calling for the repeal of limited conservatorship laws. They want the Limited Conservatorship System to be "privatized" so to speak. They are promoting something called "supported decision making."

Our Project believes there should be a proper balance between rights and responsibilities, protections and liberties, with only that amount of protection in any given case necessary to minimize the risk of abuse. We favor reform of the Limited Conservatorship System, not a wholesale repeal of it.

Since vague political calls for supported decision making as a substitute for conservatorships are starting to gain traction, we decided to look deeper into the matter. Our research reinforces our views that the Limited Conservatorship System should be reformed, not repealed. In fact, many of the principles involved in supported decision making are already a part of the limited conservatorship process.

I am enclosed three essays that I have recently written on these subjects. I am sending a copy of them to Justice Harry Hull, believing that he may want to share them with the Probate and Mental Health Advisory Committee since they are relevant to that committee's evaluation of our request for the creation of a statewide Task Force on Limited Conservatorships.

Very truly yours,

Thomas F. Coleman

THOMAS F. COLEMAN
Legal Director
(818) 482-4485 / tomcoleman@earthlink.net

cc: Justice Harry Hull
Encl: Three Essays

Disability & Abuse Project

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September 22, 2014

Hon. Tani G. Cantil-Sakauye
Chief Justice of California
350 McAllister Street
San Francisco, CA 94102

Re: Follow up to prior letters

Dear Chief Justice:

I am writing to you in your capacity as Chair of the Judicial Council.

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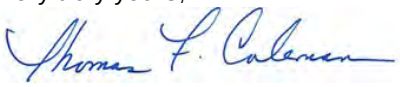
We are disappointed that things are not improving here in Los Angeles and that members of this vulnerable class of people continue to be denied equal justice in a system that is routinely violating their statutory and constitutional rights. We implore you to speed up the process of answering our request for a Task Force.

Very truly yours,



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cc: Hon. David S. Wesley
Justice Harry E. Hull

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November 17, 2014

Hon. Tani G. Cantil-Sakauye
Chief Justice of California
350 McAllister Street
San Francisco, CA 94102

Re: Task Force on Limited Conservatorships

Dear Chief Justice:

Many months ago I wrote to you with a request for the Judicial Council to convene a statewide Task Force to review systemic and operational deficiencies in the Limited Conservatorship System and to make recommendations for improvement to that system. You referred our request to Justice Harry Hull, Chair of the Rules and Projects Committee. He referred it to the Probate and Mental Health Advisory Committee:

Our proposal came before the Advisory Committee at a public meeting on November 14. At that meeting, and in the many months preceding it, no one has disputed the validity of our complaints, the accuracy of our factual assertions, or the need for such a Task Force. The concern that was raised at the committee meeting last Friday was that of funding and staffing.

We believe that the Judicial Council can obtain all or a large portion of the funding needed to operate the Task Force from several sources, including: the State Bar Foundation, Cal OES, the federal Administration on Developmental Disability, and the federal Office for Victims of Crime. We are willing to discuss funding ideas with the Judicial Council. As I said at the committee meeting, “Where there’s a will, there’s a way.”

The Judicial Council has had the will to create task forces in other important areas, including: a Family Law Task Force, a Children in Foster Care Task Force, a Domestic Violence Task Force, a Probate Task Force (for seniors in general conservatorships), a Language Access Task Force, and a Task Force on Self Represented Litigants. The dysfunction of the Limited Conservatorship System rises to the same level of importance and need.

Just as the family law system was found to provide substandard justice as compared to civil law, the same can be said about limited conservatorship proceedings. Just as children in foster care are a vulnerable class in need of special attention, adults with developmental disabilities also have special needs in terms of the administration of justice. Just as language access barriers prevent many people from receiving equal justice, the same is true for disability access barriers – obstacles to communication and understanding. The overwhelming majority of petitioners in limited conservatorships represent themselves, and this aspect of the system needs attention. When problems with general conservatorship proceedings were exposed by the media, seniors got immediate attention with the formation of the Probate Task Force.

As Dr. Nora Baladerian told the committee at the meeting last week, the question is not whether a Limited Conservatorship Task Force should be convened, but how soon it can be done. Each day of delay is another day that large numbers of people with developmental disabilities are being denied justice.

Progress can be made while the Judicial Council seeks funding for the Task Force. The Rules and Projects Committee can create a Limited Conservatorship Survey Workgroup which can do some preliminary research into all working components of the Limited Conservatorship System in each county.

A workgroup of three people would be sufficient, along with a staff person to assist in the distribution of the surveys and receipt of the responses. I would be willing to serve as a member of the workgroup. Perhaps Judge Sugiyama would be willing to work with me, with Mr. Miller as the staff member. Just one other person would be needed and the work of the group could begin. The surveys would ask the Presiding Judge of the Probate Court in each county to have staff gather some information, answer some questions, and assemble some documents. That information would then be sent to the office of the staff person where it would be available for analysis. Using such a workgroup process would allow the Task Force to have a running start when it is created.

A workgroup of this nature is certainly within "judicial purview." The California Constitution gives the Judicial Council authority to survey judicial business. Processing limited conservatorship cases, and the activities of all of the participants in such cases are clearly judicial business.

The many essays and reports I have written in recent months document the urgent need for review of the Limited Conservatorship System. This system has operated for more than 30 years without being reviewed. It has no checks and balances built into it. The time for a comprehensive review is long overdue. That review can begin with a small workgroup conducting surveys. I am sure there are people, myself included, who would be eager to review the survey responses and documents submitted by the probate courts in each county. The surveys and preliminary analysis would serve as the foundation for the broader review by the Task Force.

I am willing to meet in person with you, Justice Hull, and/or Judge Sugiyama to discuss these ideas further and to move forward with a measured plan to implement them in phases. As I told the committee last week, let's follow the Nike motto and "Just Do It."

I look forward to your reply and to meeting with you or the appropriate members of the Judicial Council in the very near future.

Very truly yours,

THOMAS F. COLEMAN
Legal Director

Disability & Abuse Project

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www.disabilityandabuse.org • tomcoleman@disablityandabuse.orgt

November 24, 2014

Hon. Tani G. Cantil-Sakauye
Chief Justice of California
350 McAllister Street
San Francisco, CA 94102

Re: Task Force on Limited Conservatorships

Dear Chief Justice:

Since I wrote to you last week with a renewed request for a Judicial Council Task Force on Limited Conservatorship, a new report has come to my attention that I want to share with you.

The Coalition for Compassionate Concern of California recently issued a report, *Thinking Ahead Matters*, which cites our report, *Justice Denied*, and adds new research to it, along with a call for a thorough review of the Limited Conservatorship System statewide and recommendations for major reforms in that system.

The Coalition includes a network of healthcare organizations, such as the Alliance of Catholic Healthcare, Cedar-Sinai Medical Center, and California State University Institute for Palliative Care, to name a few. The study was done with the help of an Advisory Committee, including representatives of The Arc of California, Disability Rights California, the State Council on Developmental Disabilities, and the Department of Developmental Disabilities

Enclosed you will find a media release sent today to the Daily Journal and other press, as well as several pages of relevant excerpts from *Thinking Ahead Matters*.

As the press release states, “The call for reform of the Limited Conservatorship System just got louder” and we trust that you will respond to our request for a statewide Task Force in a positive manner.

Very truly yours,

THOMAS F. COLEMAN
Legal Director

cc: Hon. John Sugiyama
Hon. Harry Hull

Disability & Abuse Project

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December 29, 2014

Hon. Tani G. Cantil-Sakauye
Chief Justice of California
350 McAllister Street
San Francisco, CA 94102

Re: Task Force on Limited Conservatorships

Dear Chief Justice:

I have written to you several times during the past year. On each occasion I have provided information or documents in support of our request that the Judicial Council convene a statewide Task Force on Limited Conservatorships to address the deficiencies in the Limited Conservatorship System.

Today I am sending you information about the work of a Task Force in Indiana and several reforms to the Adult Guardianship System in that state which were prompted by that Task Force. The Indiana Supreme Court embraced some of the proposed reforms and included line items in the budget of the Judicial Branch to enable the reforms to be implemented.

The enclosed essay explains what has occurred in Indiana. The essay ends with a call for reforms in California and for you, as Chair of the Judicial Council, to convene a statewide Task Force here.

I would be pleased to meet with you and other members of the Judicial Council to discuss ways in which we can move forward to address the serious deficiencies in the Limited Conservatorship System in California. Please let me know when such a meeting can be arranged.

Very truly yours,

Thomas F. Coleman

THOMAS F. COLEMAN
Legal Director

cc: Judicial Council

Disability & Abuse Project

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May 23, 2014

Hon. Kamala Harris
Attorney General of California
P.O. Box 944255
Sacramento, CA 94244-2550

Re: Request for Oversight and Intervention

Dear Attorney General:

I am writing to request that you exercise the authority and perform the duty specified by Article V, Section 13 of the California Constitution. That provision declares: "It shall be the duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced."

As you will see from information contained in the enclosed report, constitutional obligations and statutory mandates pertaining to limited conservatorships are not being uniformly and adequately enforced in Los Angeles County. These deficiencies are adversely affecting the rights of people with developmental disabilities, as individuals and as a class of vulnerable adults without effective advocacy.

Unfortunately, when the Legislature established a legal system and procedures for the establishment and maintenance of limited conservatorships some 30 years ago, it did not designate an agency of the Executive Branch of government to monitor this system. As a result, the system is operated wholly within the Judicial Branch. The systemic and operational deficiencies identified in our report, *Justice Denied*, indicate that the judiciary is not monitoring itself and that quality assurance procedures either do not exist or are not effective.

Our Project has done its own "mini-audit" of this system as it is operated by the Los Angeles Superior Court. Our preliminary findings caused us to convene a conference on May 9, 2014, and another is scheduled for June 20. A copy of our preliminary report, *Justice Denied*, was sent to all members of the Judicial Council. We are also reaching out to the chairs of the judiciary committees of each house of the Legislature.

We do not know how limited conservatorships are processed in other counties, but if what is happening in the largest Superior Court in the state is any indication, there is a major statewide deprivation of justice that is happening to a very vulnerable population – one that is unable to adequately advocate for itself. If Los Angeles County is unique, then thousands of people with disabilities in that jurisdiction are being deprived of equal protection of the law (in addition to violations of other constitutional and civil rights).

Our Project is calling on you, as chief law enforcement officer of the State of California, to investigate this matter and to take appropriate steps to ensure that the Judicial Branch corrects these deficiencies, remedies past injustices, and moves forward in a manner that uniformly and adequately enforces all constitutional and statutory provisions relating to the establishment and maintenance of limited conservatorships.

Our Project is eager to meet with your staff to discuss the important matters addressed in *Justice Denied.*

Very truly yours,

Thomas F. Coleman

THOMAS F. COLEMAN
Legal Director
(818) 482-4485 / tomcoleman@earthlink.net

Disability & Abuse Project

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June 1, 2014

Mr. Santi J. Rogers
Director
Department of Developmental Services
P.O. Box 944202
Sacramento, CA 94244-2020

Re: Request for a Meeting

Dear Director Rogers:

The Executive Director of our Project, Dr. Nora J. Baladerian, and I would like to meet with you to discuss the ongoing violation of the rights of people with developmental disabilities by the Limited Conservatorship System in California.

As far as we can tell, the Department of Developmental Services does not play a direct role in the administration of that system, nor does it have any monitoring or oversight responsibility. We believe that when the Limited Conservatorship System was created some 30 years ago, the architects of that system made a serious mistake when they did not include any Executive Branch agency, such as DDS, into its operations, even if only as a monitor or quality assurance auditor. They placed too much confidence in the ability of the judiciary to play too many roles in administering justice for people with developmental disabilities who may need the protections of a limited conservatorship.

We are aware that DDS contracts with Regional Centers to provide and coordinate services for people with developmental disabilities, and awards more than a billion dollars a year for this purpose. It appears that only one small aspect of these services involves limited conservatorships – doing a statutorily mandated assessment about the client's capacity to make various decisions. The Department also awards more than $19 million per year to Disability Rights California, some of which is used for the Office of Client's Rights. Our preliminary investigation suggests that DRC plays virtually no role in protecting the rights of Regional Center clients when they are threatened or violated by the Limited Conservatorship System.

We have reached out to all seven Regional Centers in Los Angeles County, inviting them to participate in our conferences on the Limited Conservatorship System. We also reached out to several people at DRC. The lack of participation by DRC and the limited participation by only a few Regional Centers suggests to us that violations of the rights of limited conservatees is not in the contract of these agencies with DDS.

I am enclosing a copy of a report we recently issued about the myriad problems with the Limited Conservatorship System. Among those problems is the lack of a role for DDS and DRC and the unduly limited role of the Regional Centers. We believe those roles need to be enhanced.

Our Project is eager to meet with you and your staff to discuss the important matters addressed in *Justice Denied.* We look forward to hearing from you soon.

Very truly yours,

Thomas F. Coleman

THOMAS F. COLEMAN
Legal Director
(818) 482-4485 / tomcoleman@earthlink.net

Disability & Abuse Project

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August 29, 2014

Louis J. Rodriguez
President, California State Bar
c/o Public Defender
320 W. Temple Street
Los Angeles, CA 90012

Re: Request for a State Bar Task Force on Limited Conservatorships

Dear Mr. Rodriguez:

The Disability and Abuse Project has been studying the Limited Conservatorship System in California. Limited conservatorship proceedings are used to determine whether to appoint a conservator for an adult with a developmental disability, and if so, which rights to take away from the conservatee. People are generally conserved as young adults and remain conserved for life.

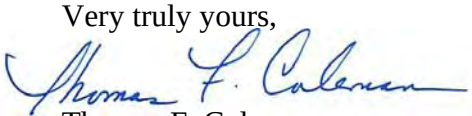
Earlier this year we issued a report – "Justice Denied: How California's Limited Conservatorship System is Failing to Protect the Rights of People with Developmental Disabilities." That report (online at www.disabilityandabuse.org/conferences/justice-denied.pdf) found systemic failures and numerous rights violations committed by judges and the attorneys they appoint to represent limited conservatees.

A new report, released in the form of an educational guidebook, details constitutional infringements and ethics violations by these court-appointed attorneys. Breaches of confidentiality and loyalty and conflicts of interest are allowed to occur – indeed they are affirmatively encouraged – by policies and practices of the Probate Court in Los Angeles. They may also be occurring in other counties throughout the state. (See: "A Strategic Guide for Court Appointed Attorneys in Limited Conservatorship Cases" which is found online at www.disabilityandabuse.org/pvp).

We are asking that the Board of Trustees to convene a Task Force on Limited Conservatorships to look into this matter. The Task Force could make recommendations on how to improve the performance of attorneys who represent limited conservatees and recommend changes in policies and practices to guard against constitutional and ethical violations of the type documented by our studies.

Thousands of limited conservatees are affected by these practices. These vulnerable adults do not have the ability to file complaints against the system in general or against specific attorneys appointed to represent them in individual cases. We are therefore making this request on their behalf. We hope that our request is favorably received by the Board of Trustees and that appropriate action is taken.

Very truly yours,



Thomas F. Coleman
Legal Director

cc: All Trustees

Disability & Abuse Project

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November 25, 2014

Mr. Craig Holden
President, State Bar of California
Lewis, Brisbois, Bisgaard, & Smith
221 N. Figueroa Street, Suite 1200
Los Angeles, CA 90012

Re: Task Force on Limited Conservatorships

Dear Mr. Holden:

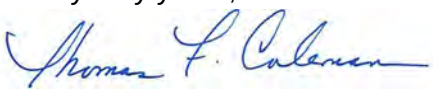
In August I wrote a letter to the State Bar President and the Board of Trustees with a request that a Task Force on Limited Conservatorships be convened. (See the enclosed letter.) The purpose of the Task Force would be to investigate whether public defenders and court-appointed attorneys are fulfilling ethical duties, adhering to professional standards, and following constitutional requirements for effective assistance of counsel in limited conservatorship proceedings.

Some counties use the services of public defenders in such cases, while other counties appoint private attorneys to represent adults with developmental disabilities in limited conservatorship cases. An analysis of the performance of court-appointed attorneys in Los Angeles County shows that serious deficiencies exist in the performance of such attorneys and that the training of the attorneys is deficient as well. Because some of the problems with the Limited Conservatorship System are systemic and pertain to defects in statutes and court rules, it is likely that conservatees in other counties are also receiving ineffective assistance of counsel.

I invite you, and new members of the Board of Trustees, to visit a page on our website with more information about the problems we have identified with attorney performance in these cases. See: www.disabilityandabuse.org/pvp The problems with the Limited Conservatorship System are much greater and run much deeper than the performance of attorneys. A new report by the Coalition for Compassionate Care of California confirms the findings of our own report, *Justice Denied*, that such problems involve the practices of judges, court investigators, and Regional Centers, as well. (See the enclosed press release about the new report, *Thinking Ahead Matters.*)

This issue should be placed on the agenda of a meeting of the Board of Trustees. I recently spoke to an advisory committee of the Judicial Council and would be pleased to make a similar presentation to the State Bar Board of Trustees. (See the enclosed Daily Journal news story.)

Very truly yours,



THOMAS F. COLEMAN
Legal Director

## Thomas F. Coleman

**From:** Thomas F. Coleman
**Sent:** Friday, January 16, 2015 11:45 AM
**Subject:** Response to Justice Hull

Dear Judge Sugiyama,

Today I put in the postal mail a letter to Justice Hull responding to his letter to me dated January 6, 2015.

I am pleased to see that a way has been found, within existing structures, to address the concerns that our Project has been raising about various aspects of the Limited Conservatorship System.

I also am pleased to see that you and Justice Hull have included other agencies within the judicial branch to work with you to address these concerns in a collaborative manner.

My letter to Justice Hull suggests that a formal structure for that collaborative effort should be created and that it should be called a "Workgroup on Limited Conservatorships." Without making it too cumbersome or adding any costs to the judicial budget, I believe that two or three people who are outside of the existing judicial branch agencies should be added to that workgroup. I would be pleased to be one of them.

Advocates for people with developmental disabilities, especially those with experience with, or who have analyzed, the limited conservatorship process should be a part of the collaborative effort.

I have asked Justice Hull to convene a meeting of people from the three entities he mentioned to discuss the next steps. I would like to participate in such a meeting.

I have no doubt that you have played an instrumental role in moving this effort forward and in obtaining approval to "review and consider recommendations for changes in law, practice, and procedures for the developmentally disabled." Thank you for whatever you have done in this regard.

I look forward to hearing from you and/or Justice Hull about future activities on these issues.

Yours truly,

Tom Coleman

Disability & Abuse Project

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Justice Harry Hull
Chair, Rules Committee
Judicial Council
914 Capitol Mall
Sacramento, CA 95814

Dear Justice Hull:

I have received your letter dated January 6, 2015 and have given it careful review. I have also discussed its contents with my colleagues at the Disability and Abuse Project.

It is clear that the Judicial Council, due to lack of funding and staffing, is not prepared to move forward with the creation of a Task Force on Limited Conservatorships. Instead, the Council has decided to delegate to the Probate and Mental Health Advisory Committee a review of the myriad issues we have raised. That Committee has decided to conduct its review in consultation with the California Center for Judicial Education and the Probate and Mental Health Education Committee.

It is also clear that the Judicial Council itself has approved a formal, and funded, process for the Probate and Mental Health Advisory Committee to "review and consider recommendations for changes in law, practice, and procedures for the developmentally disabled."

In a letter to the Chief Justice, I suggested that the Judicial Council establish a small workgroup to begin gathering information from the Probate Court in each county in the state about the policies and practices involved in processing limited conservatorship cases. Perhaps a Workgroup on Limited Conservatorships would consist of a member of the Mental Health Education Committee, the Center for Judicial Education, and be chaired by a member of the Probate and Mental Health Advisory Committee. I would like to have a role in helping the workgroup survey the county courts and gather the information and documents needed for a proper review of each local system and of the statewide system. Conducting such a survey and gathering these documents does not have to be burdensome or costly.

Whether a formal workgroup is convened or not, the activities of the Judicial Council and its various advisory bodies should be open and transparent. There are more than 40,000 limited conservatees currently under court supervision and 5,000 new conservatees are being added each year. Their lives and the protection of their rights require such transparency.

I would like very much to meet in person with you and with members of the three agencies involved in this review to discuss future activities. I look forward to having such a meeting soon.

Very truly yours,

Thomas F. Coleman

THOMAS F. COLEMAN
Legal Director

cc: Hon. John Sugiyama

STATE OF CALIFORNIA

Court of Appeal

THIRD APPELLATE DISTRICT
STATE LIBRARY AND COURTS BUILDING
914 CAPITOL MALL
SACRAMENTO, CALIFORNIA 95814

HARRY E. HULL, JR.
ASSOCIATE JUSTICE

PHONE: (916) 654-0228
E-MAIL: harry.hull@jud.ca.gov

6 January 2015

Thomas F. Coleman
Legal Director
Disability and Abuse Project
2100 Sawtelle, Suite 204
Los Angeles, CA 90025

Re: *Disability and Abuse Project*

Dear Mr. Coleman;

I chair the Judicial Council Rules and Projects Committee, which committee oversees the work of the Judicial Council Probate and Mental Health Committee. I am responding to your further letter to the Chief Justice dated 29 December 2014 regarding reforms to the Adult Guardianship System in the state of Indiana after a task force convened in Indiana reported its findings to the Indiana Supreme Court.

When your concerns over California's handling of limited conservatorships were first brought to our attention last year, those concerns were forwarded to the Probate and Mental Health Committee for its consideration.

I am advised by that committee that, at its November 2014 public meeting, the Probate and Mental Health Advisory Committee heard you and your supporters state your concerns to the committee directly. You asked the committee to recommend to the Judicial Council that the council convene a task force on limited conservatorships similar to the one convened in 2006 that reviewed and made recommendations on the subject of probate conservatorships in general. I am told that, at the November meeting, there was considerable discussion of the issues you raised, including a discussion of the cost of convening your requested task force.

I am further advised that, following your presentation, the Probate and Mental Health Advisory Committee decided that it, along with the California Center for Judicial Education and Research and the Probate and Mental Health Education Committee, would

undertake a review of some of your most prominent concerns.

The committee will go forward with its consideration of the issues you raise. I note the Rules and Project Committee, in its review of the 2015 annual agenda proposed by the Probate and Mental Health Advisory Committee, approved continued work on the issues you raise, specifically, the committee was authorized to "review and consider recommendations for changes in law, practice, and procedures for the developmentally disabled."

As perhaps you know, the Legislature and the Governor have reduced judicial branch funding by an amount in excess of $1 billion over the last four years. We have had to close courtrooms and, indeed, courthouses, all over the state and we continue to struggle with the resources that we have to insure as best we can access to justice for people throughout the state. That profound underfunding of the courts is far from being resolved. Simply put, the branch does not presently have the funds to commit to a task force such as the one that you have requested.

It would appear that your sincere concerns relating to California's handling of limited conservatorship proceedings are being heard and considered by the Probate and Mental Health Advisory Committee and will be heard in the future by the Rules and Projects Committee and the Judicial Council itself, chaired by the Chief Justice. I have every confidence in a full and fair examination into the issues you raise.

If you have further questions, please let me know directly since matters such as these eventually come to me in any event.

Thank you.

Very truly yours,

Harry E. Hull, Jr.

cc: Chief Justice Tani Cantil-Sakauye
Honorable John H. Sugiyama
Douglas C. Miller, Esq.

Disability & Abuse Project

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January 7, 2015

Hon. Carolyn Kuhl
Presiding Judge
Los Angeles Superior Court
111 N. Hill Street
Los Angeles, CA 90012

Re: Problems with the processing of limited conservatorship cases

Dear Judge Kuhl:

I am writing to request a meeting to discuss serious problems with the processing of limited conservatorship cases in the Los Angeles Superior Court.

These problems have been well documented. (http://disabilityandabuse.org/index-2.htm) They were brought to the attention of the Presiding Judge of the Probate Division in 2014. They were also called to the attention of the Chief Justice of California and to the Judicial Council and its Probate and Mental Health Advisory Committee. A voting rights complaint is pending with the Department of Justice.

Virtually all key aspects of the Limited Conservatorship System have significant deficiencies. There are serious shortcomings in the manner in which all participants fulfill their official roles in these cases – judges, court-appointed attorneys, court-investigators, and Regional Centers. The judges have not been sufficiently trained on how to insure that people with developmental disabilities are given equal access to justice. PVP attorneys are not properly trained on issues critical to their advocacy role for such clients and are generally not providing effective assistance as required by due process. Court investigators were eliminated in such cases for several years and are only now being phased back into the process. The enclosed report documents that these investigators have not been properly trained. There are also major problems with the way in which Regional Centers are evaluating clients and submitting reports to the court about their capacities.

Perhaps with new leadership at the Superior Court, including a new Presiding Judge in the Probate Division, this would be a good time to start a constructive conversation about these deficiencies and the changes that need to occur to insure that limited conservatees and proposed limited conservatees receive the justice they deserve. Our Project, which is leading the call for reform of the Limited Conservatorship System, would welcome an invitation to meet with you and Judge Maria Stratton to discuss these issues and to identify ways to improve the situation in Los Angeles County.

Very truly yours,

THOMAS F. COLEMAN

cc: Judge Maria Stratton

Spectrum Institute

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

February 16, 2015

Honorable Maria Stratton
Presiding Judge, Probate Division
Los Angeles Superior Court
111 N. Hill Street
Los Angeles, CA 90012

Re: PVP Attorneys / Rule 10.84 (training); Rule 10.85 (secondary duty)

Dear Judge Stratton:

Thank you for the invitation to meet with you to discuss the concerns we have with the manner in which limited conservatorship cases are processed through the Los Angeles Superior Court.

Dr. Baladerian and I welcome the opportunity to explore ways to improve the situation, especially how all participants in this process can better protect the rights of people with developmental disabilities. She is not able to be present at our meeting on February 20. However, she is sending you a letter to advise you of her personal experience at a training for PVP attorneys conducted by the Los Angeles County Bar Association at the direction of the Probate Court.

I feel that it is important to acknowledge that you have just been appointed as the Presiding Judge of the Probate Division of the Superior Court. Therefore, you are not responsible for the manner in which limited conservatorship cases have been processed in the past. That has been the responsibility of others who have held positions of authority with the Superior Court. Unfortunately, they did not address or correct problems with the limited conservatorship system but instead "kicked the can down the road." As a result, such problems have multiplied and intensified.

So here we are. You as the new Presiding Judge of the Probate Court, and me as the Director of a Project that has studied the limited conservatorship system – and all of its various facets – in great detail and depth. I have written many essays and published many reports about deficiencies in this system – both statewide and in Los Angeles – and have proposed possible solutions. These essays, reports, and proposals, have been sent to the prior Presiding Judge of the Probate Court in Los Angeles, as well as the Chief Justice of California, Attorney General of California, Director of the Department of Developmental Services, President of the State Bar of California, Chair of the Rules Committee of the Judicial Council, and Chair of the Probate and Mental Health Advisory Committee of the Judicial Council. I recently reached out to the Presiding Judge of the Los Angeles Superior Court and to you. Each of these communications has included a request to meet to discuss the problems we have identified.

Of the requests for a meeting to discuss our concerns about this system – including concerns about the roles of judges, court investigators, court-appointed attorneys, and regional centers – so far only two officials have responded with an invitation to meet. The first was Justice Harry Hull, Chair of the Rules Committee of the Judicial Council. Dr. Baladerian and I will be meeting with him on March 9. The second is you.

At first I thought that the scope of our meeting would be to get acquainted, but when I thought more about it – and how valuable and limited your time is – I decided to make a few proposals for us to discuss at our meeting. I am proposing two actions you can take, as Presiding Judge of the Probate Court, to address some of the concerns we have raised.

One action would be for the Los Angeles Superior Court to delete the following sentence from Rule 10.85 of the local rules of court: "The secondary duty [of court-appointed counsel] is to assist the court with the resolution of the matter to be decided." As Presiding Judge of the Probate Court, you can recommend that the sentence concerning a "secondary duty" be eliminated.

Attorneys appointed to represent limited conservatees or proposed limited conservatees should have only one duty – to advocate for their clients. They should not have a "secondary duty" to help the court resolve cases. That would be the role of an independent mediator, not the role of an advocate for a client. Giving an attorney dual roles creates a conflict of interest. This not only violates professional ethics, it undermines the constitutional duty of an attorney to provide effective assistance of counsel.

The aforementioned sentence should be eliminated – immediately and without hesitation. Rule 10.85 is a local rule adopted by the Los Angeles Superior Court. It can be modified by the Los Angeles Superior Court without the need for approval by the Judicial Council or anyone else.

Another action you can take as Presiding Judge of the Probate Court is to require meaningful and appropriate trainings for attorneys who participate on the Probate Volunteer Panel (PVP) of the Los Angeles Superior Court. The panel is a creation of the Superior Court. The rules regarding mandatory training obligations of PVP attorneys are also a creation of the Superior Court. The content of mandatory trainings, and the qualifications of presenters at such trainings, are matters within the discretion of the Presiding Judge of the Probate Court.

The previous Presiding Judge of the Probate Court told attorneys at a PVP training – at which I was present – that he was the one who would decide when it was time for another training seminar. After he made this decision, he said that he would then turn the matter over to someone at the County Bar Association and that this person would put the entire training package together. From what was said to the attorneys, the impression was that the decisions about the content of the training and the selection of the speakers were items decided by the County Bar training coordinator.

This process needs to change. The Presiding Judge of the Probate Court needs to take an active role in selecting topics and approving speakers – making sure that the topics truly help PVP attorneys to be effective advocates for people with developmental disabilities, and that the speakers are qualified to make these presentations. The prior trainings that I have attended and other trainings that I have reviewed have not met either one of these standards.

I am enclosing two short critiques of prior PVP trainings mandated by the Superior Court (PVP Training on Limited Conservatorships – Part I; PVP Training on Limited Conservatorships – Part II), as well as a longer critique of the most recent limited conservatorship training (A Missed Opportunity – Training Program Fails to Help Attorneys Fulfill Ethical Duties and Constitutional Obligations to Clients with Developmental Disabilities).

I am also enclosing a 38-page guidebook titled "A Strategic Guide for Court Appointed Attorneys in Limited Conservatorship Cases." This guidebook is the most comprehensive and detailed information available to attorneys on their duties to such clients and what they need to learn in order to fulfill those duties.

I highly recommend that you consider enlisting the educational services of Spectrum Institute to conduct one or more trainings of PVP attorneys. The work we have been doing on limited conservatorships has been a function of our Disability and Abuse Project. However, that work is being transferred to our newly created Disability and Guardianship Project. We would enlist the services of Project Directors and Project Advisors for such mandatory trainings.

Some trainings would educate PVP attorneys on "how to" comply with the requirements of the Americans with Disabilities Act and satisfy the due process entitlement of clients to effective assistance of counsel. Another training would focus on legal and psychological requirements for assessments of client capacities in each of the "seven powers" involved in limited conservatorship evaluations and how to scrutinize such assessments by Regional Centers or court investigators and how to ask that unqualified opinions or unsubstantiated reports be stricken from the record. Yet another training would educate attorneys about the statutory and constitutional rights of clients and how to defend those rights from improper infringement, including the rights specified in the Lanterman Act as interpreted by sections of the Code of Regulations promulgated by the Department of Developmental Services.

Attorneys would learn about the First Amendment rights of adults with developmental disabilities, including their right to freedom of association. They would also learn about the constitutional right of adults to intimate association (including various types of consensual sexual conduct), as well as receiving a training on "Forensic Assessment of Capacity to Consent to Sex." Sexual rights should not be taken away without a proper forensic assessment of such capacity.

It is crucial that attorneys be trained on federal and state legal requirements that adults with developmental disabilities are entitled to live in the least restrictive environment. They must also be trained that judicial orders in a limited conservatorship need to be based on clear and convincing evidence that the client truly lacks the capacity to make decisions in the area on which the order transfers decision-making power from the client to a conservator. The transfer of such power should not be routine. It should not be based upon a stipulation by a court-appointed attorney unless: (1) the attorney has been properly trained on the criteria for a particular capacity assessment; (2) the attorney has done an independent investigation into the facts supporting the capacity assessment; and (3) the attorney has received training on how to interview clients with developmental disabilities and has used appropriate methods, including adaptive technology, to interview his or her client.

None of the prior trainings of PVP attorneys has ever touched upon or even mentioned these topics,

much less provided an adequate "how to" education about them. The prior trainings have purported to comply with local rule 10.84 which requires that "the Attorney must have comprehension of the legal and medical issues arising out of developmental disabilities and an understanding of the role of the Regional Center." In reality, this rule has never been complied with. The attorney cannot comply when the Superior Court delegates trainings to the Bar Association and the Bar Association fails to include necessary topics and have qualified speakers on them.

You are now the person in charge of the limited conservatorship process in Los Angeles County. It is your responsibility to ensure that court-appointed attorneys are properly trained and take steps to insure they provide effective assistance of counsel. You have an opportunity to bring the trainings into compliance with the requirements of due process, the statement of rights in the Lanterman Act, and the mandates of the Americans with Disabilities Act. The ADA imposes requirements on private attorneys. Section 504 of the Rehabilitation Act imposes requirements on local courts. Since court-appointed attorneys are engaging in "state action" because they are court appointed and court trained, they are also governed by Section 504. Such "state action" also subjects these attorneys to potential liability for federal civil rights violations (42 U.S.C. 1983).

I know that all of this may seem overwhelming – and to some extent it is – but the problems can be handled piece by piece, in a systematic manner. An educational plan needs to be developed.

I have two suggestions on how we can help the Superior Court with PVP attorney education.

First, we can develop and present an "overview" training so the PVP attorneys can become familiar with what they eventually need to learn. Right now, they "don't know that they don't know" what the law requires them to do in order to provide effective representation for clients with developmental disabilities. Therefore, the first training should acquaint them with these issues. After they realize how the limited conservatorship system is supposed to operate – to comply with state and federal constitutional and statutory requirements – then they will be ready, and hopefully eager, to get further trainings on the subject matter areas mentioned above (in sufficient depth to fulfill their duties and provide their clients with effective advocacy). The Disability and Guardianship Project of Spectrum Institute can conduct such an overview and introductory training, perhaps as a subcontractor of the County Bar Association, and definitely with your active participation and supervision as Presiding Judge of the Probate Court.

Another option, in addition to or as an alternative to the first suggestion, would be for PVP attorneys to attend the informational briefing for advocates that we are conducting on August 7. I am enclosing a brochure about that briefing. Not only would attendance at the briefing give the attorneys an overview of how the system and all of its individual phases should operate, but it would also give them a chance to hear the questions posed by parent-advocates, sibling-advocates, and self-advocates who are concerned about the rights of people with developmental disabilities.

As for any involvement we may have with formal trainings of PVP attorneys, this will not cost the court or the County Bar Association any extra money. By my calculations, the Bar Association collects about $45,000 or so from the attorneys who attend a PVP training. Our involvement in each training would cost no more than $20,000. So there is ample money to pay our fees as well as the food and beverage service for the day, bar association staffing to register attorneys, and any other

operational costs the Bar Association may incur.

It is true that when PVP attorneys modify their practices to comply with statutory and constitutional requirements, they will be spending more hours on each case. I did an analysis of a sample of cases and discovered that, on average, PVP attorneys were billing for less than seven hours per case. There is no way an attorney can fulfill his or her duties in seven hours. So the amount of their billings will increase. However, as you know, their fees are not paid from the budget of the Superior Court. Rather, they are usually paid by the County of Los Angeles, if not by the estate of the conservatee. So any improvements in the performance of these attorneys, and the resulting increase in fees, will not come from the budget of the Los Angeles Superior Court.

Whether there are additional costs or not should not be a controlling factor. People with developmental disabilities are entitled to equal access to justice. The way the system is currently operating – including and especially the performance of PVP attorneys – they are not receiving equal access to justice. This is a violation of the ADA, Section 504, and the due process right to effective assistance of counsel.

Let us together envision a day, in the not too distant future, when the trainings of court-appointed attorneys in Los Angeles County are a model for other counties throughout the state. Perhaps these new trainings will be monitored by the Judicial Council as a pilot project that it may endorse. It may also adapt them for use as trainings for judges who process limited conservatorship cases in all counties in California.

I look forward to discussing these issues with you on February 20.

Sincerely,

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

p.s. By the time the initial overview training has been completed in Los Angeles, a Workgroup on Limited Conservatorships created by the Probate and Mental Health Advisory Committee could have completed a survey of current practices in the probate courts in all counties. That would enable the Advisory Committee and the Judicial Council to determine the need for such trainings throughout the state.

cc: Justice Harry Hull
Hon. John Sugiyama

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February 16, 2015

Honorable Maria Stratton
Presiding Judge, Probate Division
Los Angeles Superior Court
111 N. Hill Street
Los Angeles, CA 90012

Dear Judge Stratton:

I am writing to inform you of my experience attending a mandatory training for PVP attorneys that was sponsored by the Los Angeles Superior Court and conducted with the assistance of the Los Angeles County Bar Association.

When my colleague, Tom Coleman, informed me that the advertised agenda for the training included a presentation by a psychologist on "interviewing and communication skills" for clients with developmental disabilities, I registered for the event. Although I have done trainings for attorneys and law enforcement officers on this topic for many years, I am always eager to learn what other experts have to say.

I had never heard of Dr. Richard Brightman, but since this was a training mandated by the Superior Court, I assumed that he was a subject-matter expert and that he had been properly vetted by the seminar organizer. I was very surprised to learn that there was such a qualified expert since I had never heard of anyone other than myself doing this work in my 37 years of experience.

My first clue that something might be wrong was when I looked in the program to read a biographical summary of Dr. Brightman's credentials. What I found were short biographies for speakers at a prior training. Tom Coleman brought this to the attention of the seminar staff. A few minutes later, the correct biographical summaries were distributed. Unfortunately, they did not include any information about Dr. Brightman, or a syllabus or learning objectives for his presentation.

When it was Dr. Brightman's turn to speak to the group, I sat up in my chair and was ready to take notes. Unfortunately, what I heard in Dr. Brightman's presentation was absolutely nothing of substance. In fact, I do not remember if he even mentioned the term "interviewing skills" more than the one time when he said that it was such a big topic it could not be covered in 45 minutes, so he would instead do another presentation.

The presentation he did was read from a prepared text in a binder. It was his personal early-career life experience during which he met several people with intellectual and developmental disabilities, and also several psychologists and other practitioners who provide services to them. He was struck with the depth of feelings of the folks with disabilities, and learned that they have the same hopes and dreams as those who do not have disabilities. I found it odd that he had to read text to tell his personal story. He did not relate his story to the topic he was slated to address.

Following this early career experience, he did not indicate ongoing work with people with disabilities. Nor did he, at any time, reference the fact that there are professionals who conduct training programs on this topic for attorneys, law enforcement, protective services and other related professionals, and that there are both books and training videos available for them from the U. S. Department of Justice and CDAA. I produced the two videos under a grant from USDOJ using the wisdom of an advisory group, and this was part of the reason that in 2008 I was selected by DOJ to receive their National Victims Services Award from the Office for Victims of Crime. The videos are available on the NCJRS website, along with training guidebooks.

Neither the training host, Jonathan Rosenbloom, nor Judge Michael Levanis, when addressing the audience after Dr. Brightman's talk, apologized to the audience for him not addressing the promised and critical topic, or even acknowledged that the promised information was not delivered. The audience went home with a certificate from LACBA (CLE's) confirming that they had received training in interviewing skills with individuals with intellectual and developmental disabilities.

A few days later, I called Dr. Brightman. I wanted to know more about his background, training and expertise that would have caused him to be selected to be the presenter on this topic. Dr. Brightman returned my call. He said that he actually has "no expertise in interviewing individuals with developmental disabilities, no training, does not do that type of work and does not conduct trainings on the topic." He did not know of any resources on the topic that he might have shared with the audience. After finishing his studies, he said, he opened a private practice in Westwood where he treats individuals and couples, not including people with intellectual disabilities. He stated that the reason he was selected was likely that he and Jonathan are friends, and that because Dr. Brightman has kids with developmental disabilities, Jonathan probably thought he was a good choice.

I did not point out to Dr. Brightman that he should have declined the invitation as he does not have the requisite skills and background as was required by the invitation and would be required by professional ethics. But, he said, it was all very informal and he was "doing a favor" for Jonathan. I have no quarrel with someone doing a favor for a friend. I do have a quarrel with promising essential training content, then not providing it at all. And, making no apology for it, and not making up for it later. The whole thing was far below any level of quality that I had imagined would be supported by the court and/or the LACBA. I never have in the past attended a training program that they offered. I have personally, however, designed and taught dozens of training programs for attorneys and law enforcement officers and officials in which CLE's were provided, for which the content was delivered.

While Dr. Brightman may be a nice man, that is not the qualification training attendees would expect or value. They came in order to learn the skills that are needed in their critical role as legal representative of proposed conservatees. Who are the real losers? The proposed conservatees, whose attorneys have received absolutely no training to understand them and effectively converse with them.

I really hope that, with your leadership, the training operations will change.

Sincerely,

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# *Thinking Ahead Matters*: Excerpts from a New Report on the Limited Conservatorship System

Except where otherwise noted as a comment, the language contained in this document are paragraphs taken from various parts of the Thinking Ahead Matters report published in August 2014 by the Coalition for Compassionate Care of California.

These excerpts serve as an executive summary of those parts of the 97-page report that focus on the Limited Conservatorship System. The findings reported here are consistent with those contained in essays and reports published by the Disability and Abuse Project.

**Introduction**

These are the questions considered in this report:

> * What is the process of conservatorship for people with developmental disabilities in California?
>
> * How large is the impact of conservatorship on healthcare decision-making for this population?
>
> * What strategies would improve self-determination in healthcare decisions for people with developmental disabilities?

This paper considers these issues through the lens of people with developmental disabilities themselves as well as their advocates; including family members, attorneys, disability rights advocates, Regional Centers, bioethicists and providers who work closely with them. It relies on 21 qualitative interviews with a total of 22 key informants from these groups, as well as assembling background resources with strategies and policy recommendations on relevant topics that are intended to enhance the agency, dignity and choice of disabled individuals. The essential purpose is to strengthen the opportunity for the disabled person to make or actively contribute to making decisions important to themselves, up to and including the end of life.

**Background**

Today, with the reduction in institutionalization and over-crowded, understaffed and under-funded conditions, people with I/DD have a life expectancy near that of other adults, with an average life of 65 years compared to 70 in the general population.

Nationally, over 75% of people with I/DD live with their families, and more than 25% of family caregivers are over the age of 60.

**A Pro-Disability Philosophy**

Surrogate healthcare decisions, when needed, should be made by caregivers who know the patient well and attempt to view quality of life from the patient's perspective.

**Legal Issues**

In the late 1970's a series of reforms was instituted to the conservatorship process, intended to create due process and protect the rights of conserved persons. In 1977 the position of court investigator was created, and courts received authority to appoint an attorney to represent proposed conservatees.[36] In 1980, California established the "Limited Conservatorship" specifically for adults with I/DD.

According to conservatorship attorney Stephen Dale, Limited Conservatorships are intended to give "just the right amount of powers – not too much, not too little."

While the general conservatorship process begins with an assumption that all powers will be given and the judge may reserve some rights as the process unfolds, Limited Conservatorship does not presume the disabled person is incompetent. Limited

Conservatorships are designed to help persons with I/DD lead more independent, productive and normal lives, and the disabled person retains all legal and civil rights except for those the court specifically grants to the conservator. It requires consideration of the person's abilities in seven fundamental areas, and awards the conservator rights to just those powers where the person needs assistance.

Limited Conservatorships involve a number of discrete steps. A recent report, *Justice Denied: How California's Limited Conservatorship System is Failing to Protect the Rights of People with Developmental Disabilities* by the Disability & Abuse Project of Spectrum Institute, provides a general outline of the transactions associated with Limited Conservatorships.

**Adults with I/DD Who Are Conserved**

(Comment: Data obtained from the Department of Developmental Services show that out about 141,000 adults with intellectual and developmental disabilities in California, slightly more than 40,000 are conserved. Of those conserved, some 25,500 have a parent or relative servicing as conservator, nearly 900 have the Public Guardian, and nearly 800 have a private non-relative conservator.)

**Critiques of the Limited Conservatorship Process**

Attention has begun to focus on Limited Conservatorships and how they operate, raising concerns that they do not function as intended. There was strong feedback from informants involved in conservatorship about the negative impact of California's diminished funding of both the courts and the Regional Centers. One described the court-funding crisis in particular as resulting in "chaos" in court processes. Several attorneys also believe that cuts to Regional Centers have diminished the assessment of the disabled person's capacities. They believe that Regional Center assessments have become less individualized and more pro-forma, with boilerplate language submitted in many cases rather than accurate personalized reporting on client capacity in each of the seven powers. Other informants identify a lack of training and knowledge of the population amongst attorneys and court officials as a complicating factor. And while there are differences of opinion about the location of the dysfunction and how it is evidenced within the system, there is widespread agreement that lack of proper oversight and remediation are difficulties in cases where conservatorships are bad. Informants report that this is a significant problem that is hard to remedy, with serious consequences for vulnerable conservatees. All informants saw funding cuts as a core contributor to these problems and stated that they cannot be resolved without an appropriate level of funding for both systems.

Informants also provided feedback that there are many instances where the ideal process and legal requirements are not implemented. Copies of the petition are not always provided to the person with a disability and close relatives. One informant reports never having seen a court investigator review psychological and medical records as part of the process. One stated that disabled persons are frequently not in attendance at the court hearing even though they are medically able to attend, and proposed conservatees are rarely consulted about who should be appointed as conservator. Informants noted that annual or biennial in-person visits to the conservatee to check on their welfare only occur rarely, and reported that the initial in-person interview with the court investigator is often conducted without privacy, in the presence of the parent or potential conservator, thereby making it difficult for the disabled person to provide candid information.

The *Justice Denied* report outlines some additional ways that problems have manifested in the Limited Conservatorship process. Utilizing a review of Limited Conservatorship cases in the Los Angeles Superior Court, the report sees that the following problems have occurred.

First, there are too few court investigators to carry out the work. The law requires a court investigator to conduct investigations on all initial petitions, conduct an annual review one year later and a biennial investigation thereafter. One informant has called this investigation the most important information in the Limited Conservatorship process. If there

is a report of suspected abuse of a conservatee, that should also prompt an investigation. However, court investigators are paid by the court directly. Due to ongoing court funding constraints, an overwhelming caseload and consequent understaffing, the court investigator report appears to be frequently waived in Los Angeles, with substitution of the Regional Center report or the report of the attorney who serves as the conservatee's court-appointed attorney, in place of the court investigator report.

This approach diminishes the impartial investigation of the circumstances and appropriateness of the conservatorship, and also creates a conflict-of-interest for the court-appointed attorney, who is ethically obligated to represent the rights of the client rather than the interests of the court.

Another issue called out is that in its minimal training, the Los Angeles Court gives court-appointed attorneys instruction that if they disagree with the "stated wishes" of the client, they should advocate for what they believe are the client's best interests.[58] While project informants point out that experienced conservatorship attorneys understand the duty to represent the proposed conservatee as specified in the Probate Code, this report concludes that such instructions can result in attorneys acting as de-facto guardians *ad litem*, advocating for what they believe are the best interests of the client rather than advocating for what the client expressly wants.[59] That outcome does not appear to be consistent with the intention and purpose of the Limited Conservatorship process.

In addition, Limited Conservatorships are sometimes granted when the Regional Center report has not even been filed. Even when they are filed, these reports lack criteria and guidelines to make standardized and valid assessments of client capacities.[60] Furthermore, ongoing biennial investigations by the court investigator, required by state law, do not appear to be occurring in Los Angeles.[61] Informants to this project report this lapse is occurring in other counties as well.

The *Justice Denied* report finds, and informants to the current study concur, that education about the I/DD population as well as about the conservatorship process itself, are severely lacking. Courts and attorneys need better education about the population, including the requirement and importance of providing reasonable accommodations under the Americans with Disabilities Act, in order for disabled persons to be able to communicate their views and wishes in the process.[62] Parents and other potential conservators who file petitions need training about the conservatorship process and the duties and responsibilities of conservators, including the responsibility to take the disabled person's wishes into account even when they are conserved. All parties need better information about supported decision-making and appropriate alternatives to conservatorship. Finally, neither the Department of Developmental Services nor a client rights advocacy agency has a formalized role in monitoring the Limited Conservatorship process.

Although some of these findings may be unique to Los Angeles County, many appear to have validity in other counties. As far as we are aware there is no quantitative study of the outcomes of Limited Conservatorships across the state of California; however, differing county-to-county processes are a significant problem in the applicability of statewide legal standards and of equity across counties. Each county's courts have differing policies and administration, which are often vastly different from one to the next.

The variability in policies of locally administered agencies, both the courts and those under the domain of county boards of supervisors, vastly complicate the real world outcomes of Limited Conservatorships and interventions in situations of abuse and neglect involved with bad conservatorships, and deserve further study and recommendations for improvement.

People with intellectual and developmental disabilities have rights under both state and federal law that protect them in a variety of ways. Among these are the Lanterman Developmental Disabilities Services Act (Appendix C) located in California Welfare and Institutions Code. Section 4502 ensures the same legal rights and responsibilities guaranteed all other

individuals by the United States Constitution and laws of the State of California, with protection against exclusion from participation, denial or discrimination under any program or activity that receives public funds. Section 4502.1 ensures the rights of individuals with I/DD to make choices about their own lives and requires public and private agencies to provide opportunities to exercise decision-making skills in any aspect of day-to-day living, provided in understandable form. Furthermore, Limited Conservatorship statutes require that under a conservatorship, the conservator is responsible to secure services which "will assist the limited conservatee in the development of maximum self-reliance and independence,"[67] and reserves all rights not explicitly granted to a conservator for the disabled person. All of these laws are intentional in preserving the independence and choices of people with I/DD, and providing respect and protection for their decisions. How these laws are administered in practice, however, has a significant impact on the ability of a disabled person to exercise decisions in his or her day-today life.

**Medical Issues**

The role of conservatorship is seen differently depending on the vantage point of the observer. Conservatorship attorneys express that it is an appropriate tool depending on unique circumstances and individual and family needs; neither good nor bad but sometimes necessary. They emphasize the importance of conservatorship in protecting vulnerable people from harm, exploitation and abuse. Regional Center informants who see many complex situations report that in some cases family members have been the ones abusing disabled adults, and have used their status as conservator to obstruct investigation and intervention by Adult Protective Services. On the other hand, a father whose son is conserved uses the authority of conservatorship to help stand on his son's side and empower his wishes when service providers and social workers try to "browbeat" or coerce his son to do things that are not in his interest.

Explaining the alternatives to conservatorship for healthcare decision-making is not, by itself, a full solution. A conservatorship attorney who works with low-income families reports that tension often exists between parents and Regional Centers; families see conservatorship as a means of empowerment when Regional Centers are not responsive and do not give them a "say" in the type of services they receive. For these families, conservatorship can be seen as a strategy to navigate complex systems and advocate for services their loved one needs. This can be especially important for undocumented families.

(Comment: The statements in the following paragraph are even more significant when one considers the requirement of the California Constitution that laws of a general nature must operate uniformly throughout the state.)

A key challenge to making improvements to processes of medical decision-making for the publicly conserved is the fact that Public Guardians (as well as courts) are locally administered, and each county and jurisdiction interprets and implements laws and policies differently. Drought comments, "The extreme variation in practices noted across counties seems to exceed what the ambiguities in the law might suggest." Another informant stated, "The interlocking gears of these systems are not necessarily a good fit and at times create friction that is unbearable for the people who are caught in it." The Legislature and DDS have an interest in making these gears work more smoothly and ensuring that local policy is implemented with enough consistency so that clients of Regional Centers are protected and afforded the benefits of the Lanterman Act, no matter in which county they reside.

A Regional Center Medical Director notes that without this depth, caregivers sometimes see it as an "assignment" to "sign people up" for an advance directive. This can lead to inappropriate prompting to make choices the caregiver sees as correct rather than a dynamic process of helping the disabled person to understand and express choices.

**Supported Decision Making**

Supported decision-making (SDM) is a process of seeking assistance from chosen family members,

friends or supporters to understand situations, consider options and use their help to make choices.

Advocates express concern about the appropriateness of systems that are dependent on overbroad conservatorship as a routine part of permanency planning for people with I/DD, asserting that laws are frequently misapplied. Although repeatedly proposed and sometimes implemented, "reforms have had remarkably little effect on judicial behavior," and conservatorships are routinely granted. Research demonstrates that conservatorship can result in harm to the disabled person, hindering self-determination and community inclusion. Overly broad conservatorship can leave people feeling isolated and lonely, can cause depression, decrease motivation, create learned helplessness and undermine the disabled person's physical and psychological well-being by reducing their sense of control over their lives.

It is important to note that the state of the art of SDM exists in the early stages. While several models of formalized SDM operate internationally, there is not much research. One comprehensive review by Kohn et al raises a number of important points: for example, while there is a growing body of literature about how SDM *should* work, there is far less information on how it does work. There is little information about the internal dynamics of SDM discussions, and almost no empirical evidence that SDM systems succeed in achieving their substantive goals.

Most importantly, the review notes that SDM arrangements can create new opportunities for abuse, potentially allowing unaccountable third parties to improperly influence persons with I/DD, disempower them and undermine their rights.

Some propose that SDM could take the place of conservatorship. Alternatively, it could be integrated into the legal system as a less-restrictive option that is implemented prior to the time that a Limited Conservatorship is even considered, resorting to the more restrictive option only when SDM arrangements have not functioned successfully.

The evolution of SDM should include empirical evidence about how to ensure that decisions truly express and effectuate the wishes or preferences of the disabled person and whether SDM decisions are more beneficial to the person compared to decisions made using other approaches such as conservatorship.

**Findings and Recommendations**

The following recommendations are based on our review of the literature, incorporation of best practices identified in cited works and the practical experience of key informants. They include recommendations in each of five critical areas, and they address both policy and funding that are important to improve the area of healthcare decision-making for people with I/DD.

**California Probate Codes governing Limited Conservatorship (Probate Code §§ 1827.5, 1828.5, 1830, & 2351.5) should be amended** to require that any client of a Regional Center may be subject only to a Limited Conservatorship rather than a general conservatorship. General conservatorships for Regional Center clients should be prohibited.

**These Limited Conservatorship statutes should also be amended** to include a meaningful requirement that alternatives to conservatorship were understood, explored and an explanation of the reasons why they were unsuccessful and conservatorship is needed, as part of the process of petitioning for a Limited Conservatorship.

**Training about the I/DD population and the process, duties and responsibilities of Limited Conservatorship** should be formally initiated for those seeking to petition for conservatorship as well as for attorneys who work on Limited Conservatorship. These trainings should include information about facilitating communication and providing reasonable accommodations under the Americans with Disabilities Act to allow disabled persons to have meaningful participation in the legal process.

**The Legislature, in consultation with DDS,**

**Regional Centers and the state's protection and advocacy agency, should undertake a series of special hearings** to consider critical issues that are primarily locally-administered but have a substantial impact on persons with I/DD who may be subject to neglect or abuse. A statewide approach and legislation may be necessary regarding two critical issues: * The role of the Public Guardian and Adult Protective Services in interventions for people with I/DD who may be subject to neglect or abuse; and also in issues of end-of-life decision-making; * The role, processes and effectiveness of courts in investigating, intervening and changing troubled conservatorships.

**A disability clients' rights and protection organization with legal experience** should be funded through contract with DDS and authorized to provide oversight, monitoring, reporting and policy recommendations on the Limited Conservatorship process statewide.

**DDS should refine and improve its data collection on conservatorship**, including specifically tracking three vulnerable populations: * Those who have a Limited or general conservatorship as well as an LPS conservatorship. * Those served by a Public Guardian as their conservator. * Those flagged by Regional Centers as having a conservator who has been reported to Adult Protective Services for suspected abuse or neglect.

**California should launch and evaluate a pilot study** to support implementation of a collaborative model that includes officials of the Court, the Public Guardian, the Regional Center and bioethics professionals, to improve medical decision-making for publicly conserved individuals as recommended in the Drought report.

**Regional Center funding that has been cut should be restored** in order to ensure that services are adequate, caseloads are manageable, individualized assessments are appropriately conducted and public educational efforts are restored.

**Court funding should be restored** to eliminate chaos in operations and ensure that the requirements of the 2006 Omnibus reform legislation are fully implemented. Within these restorations, funds should be earmarked to support the proper implementation and oversight of Limited Conservatorships, based on compliance with legal requirements for initial, annual and biennial investigations by court investigators.

**Concluding Comments**

Though project informants had diverse perspectives about conservatorship, they agreed on a number of points. First, they reported that mainstream society operates from a lack of understanding, experience and acceptance of people with I/DD, often influenced by perceptions of "normalcy" of appearance or behavior. They also report that as a result, people with mild to moderate disabilities are widely underestimated in their capacities for independence and decision-making. In addition, people with moderate to severe disabilities are also underestimated in their ability to make choices, but may require more supports to make their preferences meaningful and effective. These supports span the range of options from good care coordination to intensive supported decision-making to Limited Conservatorship depending on the situation. The optimal solution is the least restrictive intervention that also yields effective results.

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http://disabilityandabuse.org/conservatorship-reform.htm

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Members of the Advisory Committee to the *Thinking Ahead Matters* Report and the 2014 Membership in the Coalition for Compassionate Care of California appear on the following pages.

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COALITION FOR COMPASSIONATE CARE OF CALIFORNIA

2014 Membership

## Organizations

- Alliance of Catholic Healthcare
- Bright Star Care
- Brown & Toland Physicians
- California Assisted Living Association
- California Association of Long Term Care Medicine (CALTCM)
- California Hospice & Palliative Care Association
- California State University (CSU) Institute for Palliative Care
- Camarillo Hospice Corporation
- Carehouse Healthcare Center, LLC
- Cedars-Sinai Medical Center
- Center For Healthcare Decisions
- Channing House
- Children's Hospice and Palliative Care Coalition
- Chinese American Coalition For Compassionate Care
- Citrus Valley Health Partners
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- LeadingAge California
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- Salus Hospice
- SCAN Health Plan
- Seniors*at*Home
- Seton Medical Center
- Sharp HealthCare
- Sharp HospiceCare
- Sutter Health
- Tahoe Forest Hospice
- TrueNorth Healthcare

## Advisory Committee

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*Eugenia Jones, Member*
**California Department of Developmental Disabilities and Eastern Los Angeles Regional Center Consumer Advisory Committees**

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**Law Office of Guy A. Leemhuis**

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**California Olmstead Advisory Committee and California Department of Developmental Services Consumer Advisory Committee**

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*Judy Thomas, JD, Executive Director*
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