



Disability and Guardianship Project

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Dear PVP Attorney,

The Disability and Guardianship Project has been studying the limited conservatorship system in California, with a major emphasis on the practices of court-appointed attorneys, especially in Los Angeles. We are also looking at the practices of judges, court investigators, and regional centers.

In the coming days, we will be submitting formal proposals to the Probate and Mental Health Advisory Committee of the Judicial Council, suggesting changes in court rules to improve the performance of court-appointed attorneys who represent clients with developmental disabilities in limited conservatorship cases. The process of reviewing these proposals could take several months.

In the meantime, we have information to share with PVP attorneys. This information can help you become a more effective advocate, especially as you represent proposed limited conservatees. Effective advocacy in the initial stages of a newly filed proceeding requires attorneys to develop an ADA plan and to use the IPP review process which is currently available through the client's regional center.

I am enclosing a description of how the IPP review process works and why it is an essential advocacy tool for court-appointed attorneys. Also enclosed is a commentary by one PVP attorney.

We believe that the perspective we offer is unique and that it should be considered by those who participate in limited conservatorship proceedings. PVP attorneys represent clients in individual cases. You look at the limited conservatorship system through the lens of a few individual cases per year. Your perspective is also influenced by local court rules which require you to assume a "secondary duty" to help judges resolve cases. We believe that the imposition of a secondary duty on court-appointed attorneys is unconstitutional and puts PVP attorneys in a conflict of interest. We have asked the Presiding Judge to repeal that court rule. We are also raising that issue with the Judicial Council.

We have been analyzing the limited conservatorship system from our perspective as advocates for an entire class of vulnerable adults. This is a class that lacks political power since members of the class are unable to band together to exercise their First Amendment right to petition the government for redress of grievances. We are giving a voice to this class – a voice the class previously lacked.

We will send you an email soon with a link to the report we are submitting to the Probate and Mental Health Advisory Committee. You may find our recommendations helpful and may want to incorporate some of our suggestions into your practice, without waiting for changes in court rules to occur.

I have attended the last several mandatory trainings for PVP attorneys and plan to attend the training scheduled for May 9. Perhaps we will see each other at that event.

Very truly yours,

Thomas F. Coleman
Executive Director
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Individual Program Plan (IPP) for Limited Conservatorships: An Essential Advocacy Tool for Court-Appointed Attorneys

by Thomas F. Coleman

A procedure known as an IPP is available for court-appointed attorneys in limited conservatorships. Although requesting an IPP review will improve the prospects of a favorable outcome for clients, attorneys have not been making such requests. Using an IPP procedure will not increase costs for the probate court, so judges should endorse it.

Before explaining how an IPP review would work in this context, a discussion of the history and purposes of limited conservatorships is appropriate.

Limited Conservatorships

The California Legislature established a system of limited conservatorships for adults with developmental disabilities in 1980. The new system grew out of the disability rights and de-institutionalization movements of the 1970s. (CEB, California Conservatorship Practice, Section 22.1, at p. 1061 (2005))

The newly-created limited conservatorship system was designed to serve two purposes.

“First, it provides a protective proceeding for those individuals whose developmental disability impairs their ability to care for themselves or their property in some way but is not sufficiently severe to meet the rigid standards of Prob. Code § 1801(a)-(b) for creation of a general conservatorship. Second, in order to encourage maximum self-reliance and independence, it divests the limited conservatee of rights, and grants the limited conservator powers, only with respect to those activities in which the limited conservatee is unable to engage capably.” (Id., at Section 22.2, p. 1061)

The rights of people with developmental disabilities found in the Lanterman Act were incorporated by the Legislature into the limited conservatorship system which is regulated by the Probate Code.

“A limited conservatorship may be utilized only as necessary to promote and protect the well-being of

the individual, shall be designed to encourage the development of maximum self-reliance and independence of the individual, and shall be ordered only to the extent necessitated by the individual's proven mental and adaptive limitations. The conservatee of the limited conservator shall not be presumed to be incompetent and shall retain all legal and civil rights except those which by court order have been designated as legal disabilities and have been specifically granted to the limited conservator. The intent of the Legislature, as expressed in Section 4501 of the Welfare and Institutions Code, that developmentally disabled citizens of this state receive services resulting in more independent, productive, and normal lives is the underlying mandate of this division in its application.” (Probate Code Section 1801)

- ✓ Available but unused procedure
- ✓ Improves outcome for client
- ✓ Needed for effective advocacy
- ✓ May save the court money
- ✓ Should be used in each case

Role of Appointed Attorneys

The Probate Code specifies that when a limited conservatorship petition is filed, the proposed conservatee is entitled to be represented by an attorney in the proceeding.

“In any proceeding to establish a limited conservatorship, if the proposed limited conservatee has not retained legal counsel and does not plan to retain legal counsel, the court shall immediately appoint the public defender or private counsel to represent the proposed limited conservatee.” (Probate Code Section 1471)

“Implicit in the mandatory appointment of counsel is the duty of counsel to perform in an effective and professional manner.” ([Conservatorship of Benvenuto](#) (1986) 180 Cal.App.3d 1030, 1037, fn. 6) An attorney appointed to represent a conservatee must vigorously advocate on the client's behalf. ([Conservatorship of John L.](#) (2010) 48 Cal.4th 131)

Once a statutory right to counsel has been conferred, “a proposed conservatee has an interest in it which is protected by the due process clause of the Constitution.” ([Conservatorship of David L.](#) (2008) 164

Cal.App.4th 701, 710)

These precedents confirm that adults who are subjected to a limited conservatorship proceeding not only have a statutory right to appointed counsel, but have a constitutional right under the due process clause of the United States Constitution to receive effective assistance of counsel. This article explains how an IPP is an essential component of effective advocacy in these proceedings.

When an attorney is appointed to represent a client with a developmental disability after a petition for a limited conservatorship is filed, the attorney knows the client has special needs. Along with this knowledge comes special obligations for the attorney.

Allegations in the petition put the attorney on notice that the client may have a variety of disabilities that interfere with the client's ability to make decisions, to communicate, and to adapt behavior to social norms. The disabilities may involve mobility, communication, cognitive, or emotional limitations.

To provide the client with effective representation, an attorney should immediately request a variety of documents from the client's regional center. This would include the most recent IPP as well as any clinical evaluations or reports the regional center has about the client. The attorney should have a conversation with the client's case manager to determine the types of communication or other accommodations the attorney will need to use in order to have meaningful interaction with the client. If the client is still enrolled in school, the most recent Individual Educational Plan (IEP) should also be obtained.

A review of the petition, IPP, IEP, and other regional center documents, coupled with a conversation with the case manager, should give the attorney enough information to develop a preliminary plan for making attorney-client interactions as effective as possible.

The attorney should be mindful that the outcome of the limited conservatorship proceeding could effect the client for many years. The proceeding begins with a legal presumption that the client has capacity to make all decisions in his or her life. The Lanterman Act and Probate Code specify that the client has a legal interest in keeping as many rights as possible and in obtaining the supports and services necessary to exercise those rights. It is the duty of the attorney to protect those rights to the extent the client has the capacity, with or without support, to make decisions in each of seven areas.

It is not the duty of the attorney for a proposed limited conservatee to prove anything. The petitioner

has the burden of proof.

A limited conservatorship "shall be ordered only to the extent necessitated by the individual's *proven* mental and adaptive limitations." (Probate Code Section 1801)

Proposed conservatees need an attorney to make sure the petitioner and the court investigator demonstrate, with *clear and convincing proof*, that: (1) a conservatorship is necessary; (2) lesser restrictive alternatives have been explored and why they will not work; (3) the proposed conservatee is unable to make decisions, even with help, in any of the areas where authority will be transferred to the conservator; and (4) the person seeking such authority is the best person to be appointed conservator.

Clear and convincing proof requires a finding of high probability, based on evidence so clear as to leave no substantial doubt, sufficiently strong to command the unhesitating assent of every reasonable mind. ([Conservatorship of Wendland](#) (26 Cal.4th 519, 552.) That is a very high standard.

To provide effective representation to a proposed limited conservatee, an attorney must conduct an independent investigation on the four critical issues mentioned above. Fortunately, an investigative tool is available and it is without cost to the attorney. It is called an IPP or Individual Program Plan.

Requesting an Individual Program Plan

A regional center client or an authorized representative may request an IPP review at any time. (Welfare and Institutions Code Section 4646.5(b)) Once such a request is made, a review meeting must be scheduled within 30 days.

The statutory purpose of the IPP process coincides with the type of assessment needed for a conservatorship proceeding: "Gathering information and *conducting assessments* to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities." (Welfare and Institutions Code Section 4646.5(a)(1))

Assessments pursuant to an IPP process "shall be conducted by qualified individuals." (Welfare and Institutions Code Section 4646.5(a)(1))

The attorney should send a letter to the regional center requesting a formal IPP review: (1) to assess whether the client lacks the capacity to make independent decisions in each of several areas – residence, confidential records, education, medical,

contracts, marriage, and social and sexual decisions; (2) if capacity is found to be lacking, then to assess whether the client would have capacity to make decisions in any of these seven areas with appropriate supports and services; and (3) if the answer to question 2 is yes, to identify the types of supports or services that would enable the client to engage in supported decision making so that conservatorship would be unnecessary or would enable the client to keep decision-making rights in one or more of the seven areas.

The letter should specify that the assessment should only be done by a “qualified individual” as required by law. The Legislature has indicated that conservatorship assessments may be done by a licensed medical practitioner, or by a licensed *and qualified* social worker or psychologist. (Health and Safety Code Section 416.8) Whether professionals are qualified to conduct such an assessment would depend on the extent of their training in this area.

The attorney should include in the letter the names of individuals, such as parents or others, who the client wants to attend the IPP review meeting. The meeting should occur after the assessment report has been submitted to the attorney and the regional center. Ideally, the professional who conducted the assessment should be at the meeting to answer questions, even if only by telephone.

Since the process of the court has been invoked by the filing of the petition, an updated IPP agreement cannot be signed and implemented without court review. If the petition is withdrawn or dismissed, the client would be able to sign the IPP update. If the case is set for a hearing, or if a conservator is appointed, the court could approve the updated IPP or the conservator would be able to sign it after letters of conservatorship have been issued.

If the regional center declines to appoint a qualified individual to conduct an assessment, or if there is a disagreement about whether the regional center will provide the supports and services necessary for supported decision making, the attorney has procedural options to resolve the dispute.

The attorney could file an administrative appeal on behalf of the client under the fair hearing procedure. Alternatively, the attorney could ask the probate court to issue an order to show cause directing the regional center to provide the service or to appear in court to show cause why it should not do so.

Regional centers are authorized by statute to conduct an assessment of the specific areas, nature, and degree of disability of the proposed conservatee

and to submit a report to the court with findings and recommendations. (Probate Code Section 1827.5(c)) Since the law requires that assessments for IPP purposes must be done by “qualified individuals,” an assessment for a court proceeding should be done by a *qualified* professional as well.

Current practices for regional center assessments, at least in Los Angeles County, are very informal. Methods vary from one regional center to another. Criteria and trainings for assessments are lacking. Sometimes reports are filed *after* a conservatorship order is granted. Requests by attorneys for IPP reviews would improve the process considerably.

In Los Angeles, local court rules require attorneys who represent proposed limited conservatees to be “familiar with the role of the regional center.” (Rule 4.124) There must be a purpose underlying this rule. Presumably having such knowledge enables attorneys to utilize the services of a regional center in the context of a limited conservatorship case.

There would be no cost to the probate court for IPP reviews requested by attorneys. Regional centers would pay for staff time, capacity assessments, and supported decision making services if needed. The attorneys would spend a few additional hours on a case, but those fees would be paid by the county and would not come from the court’s own budget.

Ongoing court supervision of a conservatorship case can be expensive over time. An IPP review may determine that appropriate services for supported decision making completely obviate the need for a conservatorship. The possibility of eliminating ongoing court supervision should itself cause judges to endorse this available, but not utilized, IPP review process in conservatorship cases.

With so much riding on the outcome, effective representation requires attorneys to request an IPP review and an assessment of capacities by a qualified professional. This should become a standard practice for all court-appointed attorneys in limited conservatorship cases. Judges who appoint such attorneys should not just support it, they should require it. ◇◇◇

Attorney Thomas F. Coleman is the Executive Director of the Disability and Guardianship Project of Spectrum Institute. www.spectruminstitute.org See also: [A Strategic Guide for Court-Appointed Attorneys in Limited Conservatorship Cases.](#)



Comments of a Court-Appointed Attorney on Using the IPP Process in Limited Conservatorship Cases

After reviewing the article recommending that court-appointed attorneys should use the IPP process at regional centers during the initial stage of a limited conservatorship proceeding, here is what one longtime member of the Probate Volunteer Panel in Los Angeles said in an email on April 16, 2015.

I read the article. I actually got to see an IPP report (i.e. a report labeled such) very recently in connection with a PVP appointment in another county in a limited conservatorship where the public defender got conflicted out. The report was *extremely helpful* in understanding my client's disabilities and the extent of his functioning. But again, this is not something that the regional center in Los Angeles "advertises" as available, nor do I recall it being mentioned at any of the seminars I attended – even the minor's counsel seminar where folks from a Los Angeles regional center were speakers.

What we get in Los Angeles County is on or before the court date, the regional center sends a letter report which basically outlines the proposed conservatee's developmental disability, their functioning (to a limited extent) and then specifically addresses each of the Probate Code Section 2351.5 powers that are requested, but ... this report has nowhere near the detail of the IPP that I saw. In fact, these reports appear to be "canned" in the sense that they follow a very specific outline and in many instances the paragraphs are nearly identical in wording, regardless of the nature of the disability.

I have never seen such a report contain information on how the proposed conservatee's capacity could be preserved through the provision of appropriate supports and services. The only way I have ever obtained that type of information was through a conversation with their case worker (if that person was willing to talk to me) or if the family/petitioner was enlightened enough to even understand or be concerned about this issue as opposed to being so concerned about being able to obtain medical care or other financial support or respite that they were just desperate to get the petition granted.

Because we don't get these reports until – frequently – the day of the hearing, what I have been doing to get information to understand my client's functioning (beyond what the petitioners are able to give you which often is extremely limited and non-helpful although sometimes they do have IEP's and even regional center evaluations and I also ask for medical records if they have) is to identify the regional center worker and then speak with him or her.

For the most part, lately, they've been pretty cooperative with me (its mostly two people here, so you develop a relationship and they are comfortable talking to you I guess). But still, I often don't know what I should really be asking for since I am working from a blank slate when I make that kind of phone call, and the case worker probably doesn't have the time to spend going through the proposed conservatee's entire file.

Thus, no one at the regional center has ever mentioned the IPP as a tool available to me or my client. Even though I asked for written information from the regional center in the past, this type of evaluation/report was not volunteered (although in a recent case the case worker did send me an evaluation, so presumably someone had requested it in the past – I clearly didn't know my client's rights or specifically what to ask for!). Wonder why the regional center doesn't mention this, when its so helpful? Is there some budgetary issue in Los Angeles County?

The article is very helpful, in my view. This should *definitely* be part of the training for a PVP; in fact, it appears there needs to be a protocol for court-appointed attorneys to follow in handling these matters so they can get educated *before* even the initial interview of the client.