



Disability and Guardianship Project
555 S. Sunrise Way, Suite 205 • Palm Springs, CA 92264
(818) 230-5156 • www.spectruminstitute.org

September 21, 2018

Ms. Leah Wilson
Executive Director
State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Request to Modify the California Code of Judicial Ethics;
A Role for the State Bar to Support the Clarification of Judicial Ethics

Dear Ms. Wilson:

Spectrum Institute has just written to the Supreme Court pursuant to the court's jurisdiction under Article VI, Section 18(m) of the Constitution. That provision gives the court authority to establish a Code of Judicial Ethics to regulate the conduct of judges – both on and off the bench.

Based on research we have been conducting over the past six years, we are requesting the Court to modify the Code to clarify that judges may not operate or direct a legal services program involving attorneys who appear before the judges or their court in individual cases.

The report we have submitted to the Supreme Court is enclosed. We call our report *The Domino Effect* because the violations of ethics by judges who run a legal services program have an adverse effect on the legal ethics of and performance by attorneys appointed by the court, which in turn has an adverse effect on the quality of services being received by clients. We doubt that this problem is unique to the superior court in Los Angeles, since courts in other counties are managing and directing legal services programs whereby they select, appoint, order payments for, reappoint, and train attorneys who are designated by the court to represent conservatee and proposed conservatees.

The current Code of Judicial Ethics appears to be insufficient to prevent this domino effect from being triggered by violations of judicial ethics. We therefore have requested the Court to modify the Code of Judicial Ethics to clarify that it is unethical for judges to manage legal services programs involving attorneys who appear before them or their courts in individual cases.

We would like the State Bar to support this request. At first, our initial communications to the State Bar received no responses. Finally, with prodding from the staff of the Chief Justice they were belatedly acknowledged. However, our contacts with the State Bar have not yet yielded any significant results in terms of improving access to justice for people with disabilities. Support from the State Bar for this request, therefore, would be a most welcomed and positive change.

Respectfully,

A handwritten signature in cursive script, reading "Thomas F. Coleman".

Thomas F. Coleman
Attorney at Law (State Bar No. 56767)
tomcoleman@spectruminstitute.org

(prior communications enclosed)

Tom Coleman - Spectrum Institute

From: Spectrum Institute <tomcoleman@spectruminstitute.org>
Sent: Friday, April 7, 2017 2:48 PM
To: 'Louisa.Ayrapetyan@calbar.ca.gov'
Subject: FW: Op-Ed Articles
Attachments: daily-journal-op-ed-booklet.pdf

Louisa,

I received an email reply from Kelli informing me that you are the contact person with the Access to Justice Commission now.

So I am resending this to you.

Tom

-----Original Message-----

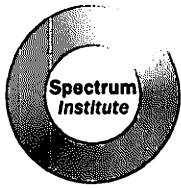
From: Spectrum Institute [mailto:tomcoleman@spectruminstitute.org]
Sent: Friday, April 7, 2017 12:35 PM
To: 'Patricia' <Patricia.Lee@calbar.ca.gov>; 'George' <George.Leal@calbar.ca.gov>; 'Evans, Kelli' <Kelli.Evans@calbar.ca.gov>
Subject: Op-Ed Articles

Today I pulled together all of the op-ed articles I have written about conservatorship reform that were published by the Daily Journal.

I thought it would be helpful to have them all in one place.

I am sharing them with people who are currently looking at these issues, so I thought I should send them to some of you at the State Bar.

I look forward to hearing from the State Bar as to what actions it will take to help ensure that people with developmental disabilities receive access to justice in limited conservatorship proceedings.



Disability and Guardianship Project
Disability and Abuse Project
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February 6, 2017

Ms. Elizabeth Rindskopf Parker
Executive Director
State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Request for Pro-Active Measures to Enhance Access to Justice for People
with Developmental Disabilities in Limited Conservatorship Proceedings

Dear Ms. Parker:

Over the past few weeks I have been in communication with three senior staff members at the State Bar. They have all expressed an interest in having the State Bar respond to the problems I have raised regarding impediments to access to justice in limited conservatorship proceedings. However, no actions have been mentioned yet as to how the State Bar will specifically address these issues.

I encourage the State Bar to take proactive steps to remedy systemic deficiencies in the performance of attorneys appointed to represent people with disabilities in these proceedings. Currently, there are no performance standards to which these attorneys are expected to comply. Trainings are sporadic and insufficient to inform attorneys on how to provide ADA-compliant services to their special needs clients. There are no monitoring mechanisms in place to determine the quality of the services being provided by county-funded legal services programs that serve these clients. Complaint systems are not accessible to litigants with cognitive and communication disabilities.

I am enclosing a few documents that will give you and your staff a better understanding of the scope and severity of these problems. If each public entity with responsibility for some aspect of the system would take remedial action, the system as a whole would soon show improvement.

The State Bar should not defer to the Judicial Council. The Probate and Mental Health Advisory Committee has dropped "performance standards" from its agenda. It has not indicated any progress on training standards. The State Bar should lead the reform effort, not follow the judiciary.

If it would help, I can come to San Francisco for an in-person meeting with you and your staff.

Respectfully submitted:

A handwritten signature in cursive script, reading "Thomas F. Coleman".

Thomas F. Coleman
Legal Director, Spectrum Institute
tomcoleman@spectruminstitute.org

cc: Mr. George Leal, Ms. Patricia Lee, Ms. Kelli Evans

Tom Coleman - Spectrum Institute

-----Original Message-----

From: Spectrum Institute [mailto:tomcoleman@spectruminstitute.org]

Sent: Monday, February 6, 2017 6:41 AM

To: 'patricia.lee@calbar.ca.gov' <patricia.lee@calbar.ca.gov>; 'Leal, George' <George.Leal@calbar.ca.gov>; 'Evans, Kelli' <Kelli.Evans@calbar.ca.gov>

Subject: Letter to Executive Director

Patricia, Kelli, and George,

Today I am sending a letter (and enclosures) to the Executive Director of the State Bar of California. I thought a follow up communication to her was appropriate. She should receive the packet of materials by Wednesday.

With over 2,000 pages of materials written about the need for reform of the limited conservatorship system, I felt it would be helpful to select a few pages that explain the scope and depth of the problems.

It appears that the Probate and Mental Health Advisory Committee is narrowing its focus and slowing its pace. Performance standards seem to have been dropped from its agenda. The timeline has now been extended to January 1, 2019.

That advisory committee is imbedded within the judiciary. It is directed by judges. As a result, it lacks the element of advocacy that is needed to move us closer to an improved system.

The State Bar, in contrast, is an association of lawyers. It has the ability to advocate. It can lead a reform effort.

I was disappointed when the Executive Committee of the Commission on Access to Justice decided to delay and defer action so it could follow what the Judicial Council may do. I think there is a parallel track on which the State Bar can move -- where it takes its own independent look at the problems and develops its own set of proposals for improvements. Advocacy for improved access to justice is sorely needed, and the State Bar can provide advocacy whereas a judicial advisory committee cannot.

Perhaps it would be beneficial for me to meet with the Executive Director and key staff people in person in the near future to discuss the path forward.

Thanks for all of the time you have devoted to reviewing the materials I have sent to you and for spending so much time with me on the phone.

Tom Coleman
Spectrum Institute

Tom Coleman - Spectrum Institute

From: Spectrum Institute [mailto:tomcoleman@spectruminstitute.org]

Sent: Friday, February 3, 2017 8:23 AM

To: 'Evans, Kelli' <Kelli.Evans@calbar.ca.gov>

Cc: 'patricia.lee@calbar.ca.gov' <patricia.lee@calbar.ca.gov>; 'Leal, George' <George.Leal@calbar.ca.gov>

Subject: follow up request to the Commission

Hi Kelli,

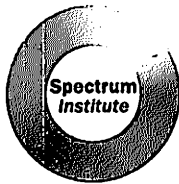
I would like the Commission on Access to Justice to reconsider deferring action on the issues I have raised. The executive committee seemed inclined to wait for the Judicial Council to act first.

In light of the information I have been able to gather in recent days (see below), it appears that the advisory committee will be acting very slowly on these issues. Already one year has passed and they say they have not identified any of our proposals that are within the purview of the Judicial Council. They have extended their work for yet another year. This delay is not helpful.

More troubling is the disappearance of “performance standards” from their new work plan. Certainly this is something that is unquestionably in the purview of the State Bar, and with respect to this class of litigants, within the purview of the Commission on Access to Justice.

I am requesting the Commission to form a Workgroup on Performance Standards for court-appointed attorneys representing clients in limited conservatorships. This is foundational to providing access to justice – including access to effective advocacy services – to a class of involuntary litigants with cognitive and communication disabilities. I would be pleased to assist the workgroup in its research and development of such standards.

Tom Coleman
Spectrum Institute



Disability and Guardianship Project

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December 12, 2016

State Bar of California
Commission on Access to Justice
180 Howard Street
San Francisco, CA 94105

Attn: Ms. Kelli Evans, Office of Legal Services

Re: Improving Access to Justice in Limited Conservatorship Proceedings

Dear Commissioners:

I have asked Ms. Evans to forward to you the attached materials with the hope that you will find time to review them prior to the Commission's meeting in January. I believe this may be the first time that access to justice for adults with intellectual and developmental disabilities has been brought to the Commission's attention.

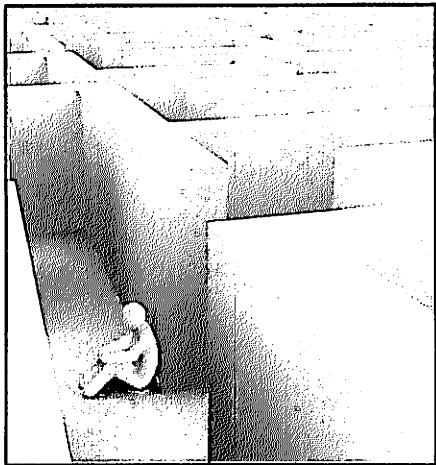
I have been studying the limited conservatorship system in California for the past several years and have written extensively on systemic problems – both in policy and practice – that contribute to the ongoing denial of access to justice for this class of litigants. If the attached materials spark an interest in learning more about the problems with this system, and what can be done to improve access to justice in limited conservatorship proceedings, you can go to the Digital Law Library on Disability and Guardianship. (<http://spectruminstitute.org/library/>) There, you will find more than 220 reports and articles on this subject. Much of the material focuses specifically on California.

The attached article published in the Daily Journal on November 2, 2016 discusses how litigants with cognitive and communication disabilities lack meaningful access to complaint procedures when their attorneys fail to perform legal services adequately. The attached 2016 Annual Agenda of the Probate and Mental Health Advisory Committee shows that the Judicial Council is beginning to take a look at problems I brought to their attention regarding the lack of standards for qualifications, performance, and training of court-appointed attorneys in limited conservatorship proceedings. The attached brochure of the Due Process *Plus* White Paper to the Department of Justice shows the scope and complexity of the problems concerning access to advocacy services – as required by the ADA.

I recently sent the State Bar a resolution for this Commission to consider adopting. If I can be of any assistance to the Commission as it considers this resolution or otherwise reviews these issues, please feel free to contact me.

Respectfully submitted:

Thomas F. Coleman
Legal Director, Spectrum Institute
tomcoleman@spectruminstitute.org



Disability awareness all day, every day

We Need to Fix Complaint Procedures for Disabled Litigants

by Thomas F. Coleman

Did you know that October was Disability Awareness Month? That designation provides an opportunity for private-sector businesses to recognize the contributions and needs of workers and customers with disabilities. In terms of the public sector,

Disability Awareness Month is a time that judges and attorneys are reminded they may need to take extra steps to provide access to justice to litigants with disabilities.

In keeping with the spirit of that month, I sent a letter to the State Bar of California in October 2015 to bring to its attention deficiencies in legal services provided by court-appointed attorneys representing clients with cognitive disabilities in conservatorship proceedings. I sent a similar letter to the California Supreme Court. Now that another Disability Awareness Month has come and gone, I am still waiting for a reply from the bar association and the court.

For judges and attorneys who interact with litigants who have cognitive disabilities, every single day must be disability awareness day. Awareness of the special needs of such litigants is not optional or something that should be considered one month each year. The Americans with Disabilities Act – and its mandate that litigants with disabilities are provided access to justice – require that each day must be disability awareness day for the judiciary and the legal profession.

Attorneys who represent clients with cognitive disabilities are bound by the same rules governing attorney-client relationships as are attorneys who represent clients without disabilities. Rules of professional conduct, promulgated by the Supreme Court and enforced by the State Bar, require attorneys to perform competently, avoid conflicts of interest, and adhere to ethical duties of undivided loyalty and utmost confidentiality. They must also

communicate effectively with their clients. A violation of any of these duties – rooted in common law, statutes, and rules of court – may be addressed through a variety of complaint procedures.

In a criminal proceeding, for example, a disgruntled defendant can ask the court to replace a court-appointed attorney who the defendant feels is performing incompetently. This triggers what is known as a “Marsden” hearing where the defendant can air any grievances in a confidential hearing. A “Marsden” procedure is theoretically available to respondents in conservatorship cases. If the complaint is found to have merit, a new attorney is appointed.

A client who has received ineffective assistance of counsel in a legal proceeding has the right to appeal to bring the complaint to the attention of an appellate court. If the appeal is successful, a new trial may be ordered.

A client who has been victimized by an attorney’s misconduct or incompetent services can file a complaint with the State Bar. If an investigation shows probable cause that statutes or court rules were violated, an administrative hearing is conducted which may result in discipline to the attorney.

These complaint procedures are theoretically available to all clients, but in reality they are not accessible to litigants with cognitive disabilities. Because

of the nature of such disabilities, litigants in conservatorship proceedings, for example, would not know whether their attorneys are performing incompetently, have a conflict of interest, have been disloyal, or have violated the duty of confidentiality. This type of a disability also makes them unaware that complaint procedures are available or to understand how to go about filing such a complaint.

Clients with cognitive disabilities are, in a practical sense, unable to make a Marsden motion, file an appeal, or lodge a complaint with the bar association. Unless the judiciary and the legal profession take affirmative measures to provide such clients meaningful access to these complaint procedures, litigants with cognitive disabilities will continue to be excluded from this aspect of the administration of justice.

Solutions are available if only they are sought. There are three public entities in California – each of which has obligations under Title II of the ADA – that should seek solutions so that litigants with cognitive disabilities have access to these attorney complaint procedures.

The Judicial Council of California adopts rules governing trial and appellate court procedures. It should consider a new rule to give “next friend” standing to a third party to make a Marsden motion on behalf of a respondent in a conservatorship proceeding. A more liberal rule on standing should also be adopted to allow a third party to file an appeal when the rights of a litigant with a cognitive disability have been violated due to attorney misconduct or judicial error or abuse of discretion.

The State Bar of California has a major role to play. Knowing that clients with cognitive disabilities will generally not be aware of attorney misconduct or incompetent services, the bar association should allow a third party to initiate a complaint against an attorney suspected of violating rules of professional conduct.

The State Bar can also take pro-active measures to minimize deficient legal services to litigants with cognitive disabilities. For example, it can monitor

training programs for public defenders and court-appointed attorneys who represent respondents in conservatorship proceedings to ensure they are ADA-compliant and that they make the attorneys qualified to handle such cases. MCLE credits should only be allowed for ADA-certified educational programs.

The State Bar also can annually audit a sample of conservatorship cases throughout the state to verify, after the fact, that the attorneys truly provided the clients effective advocacy services. Knowing that his or her case might be selected for an audit could have a positive effect on attorney performance.

In addition to its adjudicative role in litigation, the California Supreme Court has an administrative function as well. It is a “public entity” with responsibilities under Title II of the ADA to ensure access to justice for litigants with disabilities. It should exercise its administrative responsibilities by convening, or instructing the State Bar to convene, a Task Force on Access to Attorney Complaint Procedures. Such a task force – composed of attorneys, judges, and representatives of organizations advocating for seniors and people with intellectual disabilities – would delve deeper into how to give clients with cognitive disabilities better access to justice if and when their attorneys fail them.

If the state judiciary and the legal profession heed this call to action, perhaps when Disability Awareness Month rolls around in October 2017, the Supreme Court, the State Bar, and the Judicial Council will have found some viable methods of providing meaningful access to these complaint procedures for litigants with intellectual disabilities. ♦♦♦

Thomas F. Coleman is the legal director of the Disability and Abuse Project of Spectrum Institute.
Email: tomcoleman@spectruminstitute.org
Website: www.spectruminstitute.org

Published on November 2, 2016

Daily Journal

California's premiere legal newspaper

Tom Coleman - Spectrum Institute

From: Spectrum Institute [mailto:tomcoleman@spectruminstitute.org]

Sent: Tuesday, December 6, 2016 1:30 PM

To: 'jorge.navarrete@jud.ca.gov' <jorge.navarrete@jud.ca.gov>

Cc: 'Leal, George' <George.Leal@calbar.ca.gov>; 'patricia.lee@calbar.ca.gov' <patricia.lee@calbar.ca.gov>

Subject: Thank You

Mr. Jorge Navarrete
Court Administrator
Supreme Court of California

Dear Mr. Navarrete,

I am writing to thank you for your letter to Spectrum Institute.

We are pleased by the action taken by the Chief Justice to authorize the Probate and Mental Health Advisory Committee of the Judicial Council to review the adequacy of existing court rules pertaining to limited conservatorship proceedings. We look forward to giving that committee our feedback when any new proposals it may develop are available for public comment. We are hopeful that new court rules and judicial standards will better protect the substantive and procedural rights of people with intellectual and developmental disabilities in these proceedings.

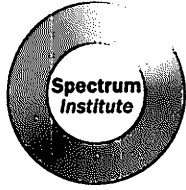
Also, we would like the court to know that the State Bar has been very responsive to the outreach to it by court staff regarding our other concerns. I have had significant conversations with Mr. George Leal, Director of Education Standards, and Ms. Patricia Lee, Managing Director of Diversity Outreach. Based on those conversations, I am optimistic that the association will find appropriate ways to address the access-to-justice concerns raised by Spectrum Institute.

Please let the Chief Justice and court staff know that we very much appreciate the attention being given to these issues by the Supreme Court, the Judicial Council, and the State Bar.

Sincerely yours,

Thomas F. Coleman
Legal Director
Spectrum Institute

cc: Mr. George Leal, Ms. Patricia Lee



Disability and Guardianship Project
Disability and Abuse Project
9420 Reseda Blvd. #240, Northridge, CA 91324
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November 30, 2016

Ms. Elizabeth Rindskopf Parker
Executive Director
State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Proposal for a Workgroup on Limited Conservatorships

Dear Ms. Parker:

I am writing on behalf of Spectrum Institute to request that the State Bar convene a Workgroup on Limited Conservatorships. The workgroup would study and make recommendations on how judges, attorneys, and other participants in limited conservatorship proceedings can improve access to justice for people with intellectual and developmental disabilities in those and ancillary proceedings.

The draft of a resolution for the Commission on Access to Justice to convene such a workgroup is being submitted with this letter.

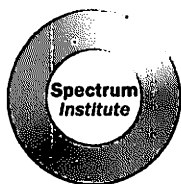
Over the past few years, I have done extensive research into the limited conservatorship system in California. Based on this research, I have published more than 220 articles and reports on how to improve access to justice for adults with intellectual and developmental disabilities in conservatorship proceedings in California and in similar guardianship proceedings in other states.

In the event that the State Bar were to convene a Workgroup on Limited Conservatorships, I would be pleased to serve as a special advisor in order to make my experience and expertise available as it investigates relevant issues and develops recommendations for consideration by the Legislature, State Bar, Supreme Court, Judicial Council, Superior Court of the State of California, and other relevant state and local government entities.

Respectfully submitted:

Thomas F. Coleman
Legal Director
Spectrum Institute
tomcoleman@spectruminstitute.org

cc: Mr. George Leal
Ms. Patricia Lee



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November 30, 2016

Ms. Elizabeth Rindskopf Parker
Executive Director
State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Withdrawal of Complaint Regarding PVP Training
Programs of the Los Angeles County Bar Association

Dear Ms. Parker:

I am writing on behalf of Spectrum Institute to withdraw its complaint regarding deficient training programs conducted by the Los Angeles County Bar Association (LACBA) for court-appointed attorneys who represent clients in limited conservatorship proceedings.

After speaking with George Leal, Director of Education Standards, and Patricia Lee, Special Assistant for Diversity and Bar Relations, it became clear that the State Bar is interested in improving access to justice for litigants with intellectual and developmental disabilities. However, it also became clear that the resources of the State Bar would be more effective in that regard if they were focused on the big picture rather than a local problem.

Therefore, Spectrum Institute is withdrawing its complaint against LACBA. Instead, it is asking the State Bar to convene a Workgroup on Limited Conservatorships to study and make recommendations on how judges, attorneys, and other participants in limited conservatorship proceedings can improve access to justice for people with intellectual and developmental disabilities in those and ancillary proceedings.

The draft of a resolution for the Commission on Access to Justice to Convene a Workgroup on Limited Conservatorships is being submitted today for consideration by the State Bar of California.

Respectfully submitted:

Thomas F. Coleman
Legal Director
Spectrum Institute
tomcoleman@spectruminstitute.org

cc: Mr. George Leal
Ms. Patricia Lee

Tom Coleman - Spectrum Institute

From: Spectrum Institute [mailto:tomcoleman@spectruminstitute.org]

Sent: Tuesday, November 29, 2016 6:10 PM

To: 'Leal, George' <George.Leal@calbar.ca.gov>

Subject: RE: Complaint re LACBA PVP Program

George,

I had a long conversation with Patricia Lee. She is a good listener . . . and a quick study.

I am optimistic that she will help the State Bar to become involved in the process of studying myriad problems with the limited conservatorship system and, most importantly, solving them.

I understand that your own jurisdiction with the LACBA training programs is limited. Nonetheless, it is important.

Ms. Lee can help the bar association focus on the big picture and all of the moving parts of the broken LC system.

She mentioned the Access to Justice Commission which deals with improving legal services for indigent clients. Almost all respondents in limited conservatorship proceedings are indigent. They are adults with intellectual and developmental disabilities, most of whom are on various forms of government assistance. They truly need the commission's assistance since they cannot complain individually and cannot advocate for themselves collectively due to the nature of their disabilities.

If ever there were a class of litigants needing help from the Access to Justice Commission, it is people with intellectual and developmental disabilities (I/DD) who are involuntary litigants in proceedings involving the potential loss of fundamental rights.

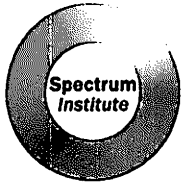
There are more than 40,000 adults with such disabilities in ongoing conservatorships in California. Another 5,000 new cases are filed each year.

The problem areas that need to be addressed are explored in various articles and reports I have published over the past three years. They are available through the Digital Law Library of the Disability and Guardianship project. <http://spectruminstitute.org/library/>

I do not yet have Ms. Lee's email address, so please feel free to pass this along to her.

And thanks for spending so much time with me on the phone yesterday.

Tom Coleman



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November 30, 2015

Honorable Tani Cantile-Sakauye
Chief Justice, California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Re: Request for Modification (Section 504) and Accommodation (ADA)

Dear Chief Justice:

I am not writing to you in your capacity as Chairperson of the Judicial Council of California. Also, I am not writing to you in connection with any specific case. Rather, I am writing to you as the presiding judge of the court that oversees the State Bar of California. This letter is sent to you, as representative of the Supreme Court, in an administrative capacity.

This is a follow up to my letter to the Supreme Court on October 26, 2015. In that letter I brought to the court's attention systemic problems of ineffective assistance of counsel stemming from a lack of training and performance standards for court-appointed attorneys who represent involuntary litigants with intellectual and developmental disabilities in limited conservatorship proceedings.

Due to their cognitive and communication disabilities, these individuals are not able to file complaints against their attorneys with the State Bar of California. Likewise, they are not able to file appeals to challenge ineffective assistance of counsel. Furthermore, as a class they are not able to petition the government for redress of grievances.

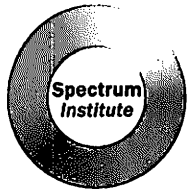
Because their disabilities preclude them from seeking relief through normal legal and political procedures or venues, the Supreme Court should – on its own motion – initiate modifications and accommodations through the State Bar or otherwise to inquire into the myriad problems that have been thoroughly documented by Spectrum Institute. As the government entity overseeing the State Bar and its Rules of Professional Conduct, MCLE credit process, and complaint procedures, the Supreme Court has an obligation to ensure that modifications and accommodations are adopted to give this class of litigants access justice so their complaints, as a class, are addressed by the State Bar and by the Supreme Court as its oversight agency. Perhaps a Task Force on Access to Justice would be the first step to verify the validity of these complaints and initiate a remedial process.

Respectfully submitted:

Thomas F. Coleman
Legal Director, Spectrum Institute

cc: Ms. Elizabeth Rindskopf Parker
Executive Director, State Bar of California

Enclosure: Essay on California Supreme Court as a venue of last resort.



Disability and Guardianship Project
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October 26, 2015

Chief Justice and
Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Re: Administrative Supervision of State Bar of California
(Access to Justice for Litigants with Developmental Disabilities)

To the Court:

We are writing to the court in its capacity as the administrative oversight body to the State Bar of California. Under California's constitutional framework, the State Bar is a public corporation which is an arm of the California Supreme Court.

Through the State Bar, the Supreme Court administers the admission, regulation, and discipline of members of the State Bar. This is a separate and distinct function from the Judicial Council of California which has constitutional authority to adopt rules and standards governing litigation in the state courts.

Because the State Bar is an arm of the Supreme Court, the actions and inactions of the State Bar are ultimately subject to the supervision of, and regulation by, the Supreme Court.

The State Bar sometimes convenes task forces to address issues involving access to justice. Spectrum Institute has written twice to the President of the State Bar asking for pro-active measures to address the denial of access to justice for people with intellectual and developmental disabilities in limited conservatorship proceedings. (<http://disabilityandabuse.org/pvp/>)

We did not receive a response to either letter. We are requesting that the court encourage the State Bar to convene a Task Force on Access to Justice in Limited Conservatorship Proceedings. The Task Force would focus on ways to improve advocacy and defense by court-appointed attorneys in such cases so that clients with special needs truly receive access to justice.

The State Bar regulates continuing education providers who conduct educational programs for attorneys. It has authorized the Los Angeles County Bar Association to give such credits to attorneys who attend Mandatory PVP Training Programs – seminars that the Los Angeles County Superior Court requires court-appointed attorneys to attend in order to remain on the Probate Volunteer Panel. Only attorneys on that panel are appointed to limited conservatorship cases for which they are paid for their services.

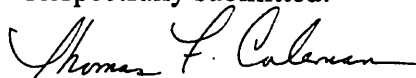
We have recently written to the Executive Director of the State Bar, asking that an audit of these seminars for the past few years be conducted by the State Bar. Our own audits have disclosed that the seminars are consistently deficient. The seminars are the focus of a complaint to the United States Department of Justice because they contribute to the failure of these attorneys to provide their clients access to justice as required by the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973. We are requesting the court to monitor how the State Bar responds to our request for a thorough audit of these seminars. The letter to the State Bar is available online at: www.spectruminstitute.org/state-bar/complaint-against-lacountybar.pdf.

The problems we have described to the State Bar never come to the attention of the Supreme Court or the Court of Appeal through the normal appellate process. When litigants with developmental disabilities are denied access to justice due to ineffective assistance of counsel, they have no appellate recourse. The nature of their disability prevents them from filing or pursuing an appeal on their own. Their court-appointed attorney will not file an appeal to challenge his or her own deficient performance. When someone else attempts to appeal, the appeal is dismissed for “lack of standing” because it is not the personal rights of the appellant that have been infringed. (Conservatorship of Gregory D. (2013) 214 Cal.App.4th 62) Thus, appeals on these issues are never heard or decided at the appellate level. This is a problem unique to limited conservatorships. The appellate process is available to aggrieved parties in every other type of litigation.

As a result of these special circumstances, it is only through its role as administrative overseer of the State Bar of California that these problems can come to the attention of the California Supreme Court. We therefore urge the court to exercise its administrative oversight authority to encourage the State Bar to address the denial of access to justice for litigants with developmental disabilities in limited conservatorship cases.

For more information about access to justice for such litigants, please refer to the enclosed brochure that describes a White Paper we recently submitted to the Department of Justice titled “Due Process Plus: ADA Advocacy and Training Standards for Appointed Attorneys in Adult Guardianship Cases.”

Respectfully submitted:



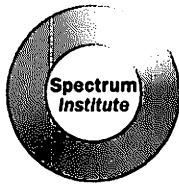
Thomas F. Coleman

Legal Director

Spectrum Institute

tomcoleman@spectruminstitute.org

cc: Ms. Elizabeth Rindskopf Parker
Executive Director
State Bar of California



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

October 20, 2015

Ms. Elizabeth Rindskopf Parker
Executive Director
State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Complaint Regarding PVP Training Programs
of the Los Angeles County Bar Association

Dear Ms. Parker:

I am writing on behalf of Spectrum Institute to file a formal complaint against the Los Angeles County Bar Association for deficiencies in its MCLE-approved training programs for court-appointed attorneys who represent clients in limited conservatorship proceedings. As explained below, there are three separate areas of complaint.

In order to be appointed to represent conservatorship respondents, attorneys must be placed on the Probate Volunteer Panel operated by the Los Angeles Superior Court. To be placed on the list and remain on the list, attorneys must attend mandatory training programs conducted by the Los Angeles County Bar Association. Although the training programs are operated by the bar association, attendance is mandated by the court. Attorneys who attend the seminars receive MCLE credits approved by the State Bar of California.

The County Bar Association is a "multiple activity provider" approved by the State Bar to give credits to attorneys who attend seminars it conducts. The rules of the State Bar authorize it to receive and investigate complaints against MCLE service providers. The rules also authorize it to conduct audits of the educational programs of service providers.

Based on our three complaints, we are asking the State Bar to conduct an audit of the PVP training programs of the Los Angeles County Bar Association from 2012 to the present. Such an audit will confirm the validity of our complaints.

These complaints are being filed with the State Bar after having exhausted other potential remedies. The complaints have been brought to the attention of the County Bar Association, the Presiding Judge of the Probate Court in Los Angeles, and the Chief Justice of California. Despite these complaints, systemic changes have not been made to the training programs. As a result, we filed a complaint with the United States Department of Justice and that complaint is pending. In the meantime, we decided that as the agency authorizing MCLE credits for a severely deficient training program, the State Bar should be made aware of these problems.

Complaint 1: Failure to Deliver Promised Training on Interviewing Skills

We are complaining about a segment of a seminar conducted on September 13, 2014. The presentation was by Richard Brightman, Ph.D. The program titled the one-hour presentation as “Interviewing and Working with Proposed Conservatees.”

Dr. Nora J Baladerian and I attended the seminar and listened to Dr. Brightman’s presentation. He did not address the topic as it was advertised. Instead, he told a personal story about his life and his involvement with people who have intellectual and developmental disabilities. Dr. Baladerian later spoke with Dr. Brightman and learned that he had no professional experience with conservatorships or in treating clients with disabilities. Interviewing skills is a critical topic for attorneys who represent limited conservatees – a topic that had never been addressed in these PVP trainings before. Continuing education credits were given for a topic that was not covered. Instead of apologizing to the audience for the deficient presentation, the then presiding judge and the representative of the County Bar thanked the speaker for an excellent presentation. (See the enclosed letters to Judge Maria Stratton about this problem.)

Complaint 2: Systemic deficiencies in failing to provide training needed to effectively represent limited conservatorship respondents

We are complaining that the PVP training program has systemic flaws that cause it to repeatedly fail to deliver information that PVP attorneys need to develop the skills necessary for them to provide effective representation to limited conservatees. Topics that should be included are not. Incorrect information is sometimes given by presenters – information that can cause harm to clients. Critical subjects are treated in a cursory manner.

Detailed descriptions of our complaints are found in two documents we submitted to the Judicial Council of California on May 1, 2015. (See: “Proposals to Modify the California Rules of Court: Qualifications, Continuing Education Requirements, and Performance Standards for Court-Appointed Attorneys in Limited Conservatorship Cases.” Also see pages 30-72 of the “Exhibits” to that report.) The exhibits provide ample evidence of systemic deficiencies in these training programs.

Complaint 3: The PVP training programs do not comply with Title II of ADA

The State Bar has been authorizing the Los Angeles County Bar Association to give MCLE credits for training programs that allow, or actually encourage, violations of the Americans with Disabilities Act. Attendance at these trainings is mandated by the Los Angeles Superior Court. The presiding judge of the probate court knows the content of the program and expressly endorses the content by prior approval or implicitly approves the content by attending the programs and then praising the speakers or the bar association for excellent presentations.

The State Bar is a public agency that is subject to the requirements of Title II of the Americans with Disabilities Act, as is the Los Angeles Superior Court. While the County Bar is a nonprofit corporation, it acts as an agent or contractor of these two public agencies when it operates these PVP training programs. The court delegates its responsibility to ensure the attorneys are properly trained. The State Bar delegates authority to confer MCLE credits. Thus Title II delegation liability is implicated in the PVP trainings authorized and approved by Title II public entities.

On June 26, 2015, we filed a complaint with the United States Department of Justice alleging that the Los Angeles Superior Court was violating Title II of the ADA by mandating and approving training programs that were severely deficient under ADA standards. Excerpts of that complaint are included with this letter.

We subsequently audited a sample of limited conservatorship cases in which PVP attorneys had represented limited conservatees in the Los Angeles Superior Court. What we found was a pattern of deficient performance by the attorneys in these cases. We believe that most of these deficiencies in performance can be attributed to deficiencies in the PVP training programs. A copy of the Exhibit titled "Efficiency vs. Justice" is also included with this letter.

We recently submitted a White Paper to the DOJ in which we describe ADA-compliant advocacy and training standards for appointed attorneys in guardianship and conservatorship cases. If the DOJ or the State Bar were to compare the PVP training programs of the County Bar with these standards, the programs would receive a failing grade.

Request for Relief

The State Bar of California is authorizing the Los Angeles County Bar Association to offer MCLE credits for PVP training programs that: (1) fail to provide information and skills necessary for the attorneys to effectively represent clients with intellectual and developmental disabilities in limited conservatorship cases; and (2) fail to assist attorneys in providing such clients access to justice as required by the ADA; and (3) implicitly encourage attorneys to handle cases for which they lack the requisite training and skills (a violation of the Rules of Professional Conduct).

The State Bar of California was previously unaware of these problems. But now that these complaints and supporting documents have been brought to its attention, the association has a responsibility to take corrective action. Part of that obligation is grounded in its authority to supervise MCLE providers. Another part is based on the bar association's duties, as a public entity, under Title II of the ADA and Section 504 of the Rehabilitation Act of 1973.

Regardless of the source of its responsibility to intervene, we urge the State Bar of California to audit previous PVP training programs of the Los Angeles County Bar Association to verify the deficiencies documented by our own audits. The association should also require the programs to undergo systemic changes in order to ensure that attorneys who attend such trainings in the future are truly educated on how to effectively represent clients with intellectual disabilities and how to provide them meaningful access to justice in limited conservatorship proceedings.

Respectfully submitted:



Thomas F. Coleman
Legal Director
Spectrum Institute
tomcoleman@spectruminstitute.org

cc: Trusts and Estates Section of the
Los Angeles County Bar Association



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



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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.

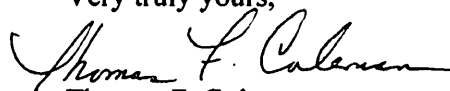
Earlier this year we issued a report – “Justice Denied: How California’s Limited Conservatorship System is Failing to Protect the Rights of People with Developmental Disabilities.” That report (online at www.disabilityandabuse.org/conferences/justice-denied.pdf) found systemic failures and numerous rights 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.

cc: All Trustees

Very truly yours,

Thomas F. Coleman
Legal Director

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. "Adopted 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.

paul_jones@dailyjournal.com

California Coalition Joins Call for Limited Conservatorship Reforms

Momentum is Building for a Statewide Review

The call for reform of the Limited Conservatorship System in California just got louder with the release of a report that echoes concerns and criticisms raised earlier this year by the *Justice Denied* report of Disability and Abuse Project of Spectrum Institute.

The new report, titled *Thinking Ahead Matters* was released by the Coalition for Compassionate Concern of California, whose research was done with the assistance of disability rights and disability services organizations and agencies, such as The Arc of California, Disability Rights California, the state Department of Developmental Services, and the California State Council on Developmental Disabilities.

Both reports show that more than 40,000 adults with developmental disabilities are under a limited conservatorship. The research underlying both reports discloses major deficiencies in the procedures utilized for creating these conservatorships and for reviewing them periodically as required by law.

The failures noted in the reports require a statewide review of policies governing the Limited Conservatorship System and the practices of judges, court-appointed attorneys, court investigators, petitioners, conservators, and Regional Centers.

The failure of the Legislature to designate an agency to monitor the practices of the participants in this system forms a major part of the problem. Inadequate training of judges, attorneys, and investigators is another major deficiency. Practices vary from county to county, thereby depriving people with developmental disabilities of equal protection of the law.

The Disability and Abuse Project sounded the alarm earlier this year through reports and conferences disclosing many deficiencies in the Limited Conservatorship System. In a presentation to the Judicial Council of California in San Francisco on November 14, the organization called for a statewide Task Force on Limited Conservatorships. When an Advisory Committee cited insufficient funding as an obstacle to creating such a task force, the organization wrote a letter to the Chief Justice reiterating the need for a statewide review and suggesting possible sources for funding.

Now that the report of the California Coalition has come to light – a report that reinforces and amplifies on the findings of the *Justice Denied* report – perhaps the Chief Justice will expedite the formation of a Task Force on Limited Conservatorships. The 40,000 adults who are currently under the control of this system, and the 5,000 more who are added to it each year, deserve as much.

To access the reports and for information: <http://disabilityandabuse.org/conservatorship-reform.htm>



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