

Efficiency vs. Justice



The deliberate bypass of legal protections
has denied many limited conservatees
access to justice in violation
of Title II of the ADA

An Exhibit
to the Class Action Complaint
filed with the United States
Department of Justice against the
Los Angeles Superior Court

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Efficiency vs. Justice: The Deliberate Bypass of Legal Protections Has Denied Many Limited Conservatees Access to Justice in Violation of Title II of the ADA

by Thomas F. Coleman

This document is being submitted to the United States Department of Justice in connection with a complaint filed by Spectrum Institute on June 26, 2015, on behalf of a class of people with intellectual and developmental disabilities who are or will be litigants in limited conservatorship cases in California. The complaint alleges that the Los Angeles Superior Court has been denying members of this class access to justice in a systematic manner in violation of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.

After the complaint and supporting documents were filed with the DOJ, Spectrum Institute conducted further investigation into the practices of the court and several court-appointed attorneys in two samples of limited conservatorship cases in which such attorneys had fee claims paid during fiscal year 2012-2013. (July 1, 2012 to June 30, 2013)

The first sample involves cases in which “Attorney X” represented proposed conservatees. That sample consists of 18 such cases. The second sample involves cases in which six attorneys represented such clients in 25 cases in “Courtroom X” during this time frame. Both samples were selected from print outs of fee claim payments supplied by the Los Angeles Superior Court pursuant to an administrative records request.

The first step of the review involved going to the court’s website to access online docket entries for limited conservatorship cases. The docket entries (two pages) for both batches of sample cases were printed out. The next step involved going to the courthouse and accessing case documents on the court’s computers. Information from the online dockets and records on the court’s computers was then transferred to data sheets. The handwritten data was later transferred to printed data sheets. Those printed data sheets are included in an appendix to this report.

A review of the activities of Attorney X and of the practices in Courtroom X shows a pattern of ongoing violations of Title II of the ADA. Instead of modifying policies and practices to increase access to justice, the exact opposite has occurred. Mandatory procedures designed to protect the rights of proposed conservatees were frequently waived. Optional procedures that would increase the likelihood of a just result were not utilized even though they could have been done without exceeding the court’s time guidelines. As a result, proposed conservatees were not afforded the process they were due. Cases were rushed through the system. Shortcuts were used. Steps were missed. Efficiency, not quality, seemed paramount to the court and the attorneys the court appointed.

This report explains how the limited conservatorship system should function. It also discusses the obligations of the probate court under Title II of the ADA and how a court-appointed attorney is the court’s method of complying with Title II to ensure that a proposed conservatee has access to justice. The report provides a template of what access to justice would look like in a typical case. It contrasts this template with the practices of Attorney X and in Courtroom X. A pattern of Title II violations are evident in both comparisons. The report reiterates the request made in the complaint filed on June 26 that the DOJ open a formal investigation into this matter.

Existing rights

The Lanterman Act is the statutory framework declaring the legal rights and protections to which adults who have intellectual or developmental disabilities are entitled. The Lanterman Act emphasizes that such adults with disabilities have the same statutory and constitutional rights, under state and federal law, as all other people have.

When someone turns 18, California law recognizes that person as an adult. An adult has the right to make all decisions regarding the activities of his or her life, including residence, education, finances, medical care, social contacts, family relationships, sexual conduct, and marriage. An adult also has a right to vote. The same rights apply to adults with intellectual or developmental disabilities. The only exception is in situations where the right to make decisions is restricted by a court order, such as when a person is placed into a conservatorship.

The day a petition for a limited conservatorship is filed by a parent, relative, or other person, the petition is seeking to take authority from someone who is vested with a full range of constitutional and statutory rights. The proposed conservatee has a federal constitutional right to freedom of speech, freedom of association, freedom to engage in sexual relations with another consenting adult, the right to equal protection of the law, the right to due process of law, and a host of other procedural and substantive rights that are inherent in the concept of ordered liberty as guaranteed by the Fourteenth Amendment to the United States Constitution.

An individual's right of privacy is specifically guaranteed by the California Constitution. The right of privacy is not limited to protecting personal information. It also protects freedom of choice in matters that are highly personal, such as procreation, sex, marriage, and family relationships.

In addition to federal constitutional guarantees protecting fundamental civil liberties, federal law also affords specific statutory protections to people with disabilities. Section 504 of the Rehabilitation Act of 1973 prohibits state and local governments, including courts, from discriminating on the basis of disability. The Act also imposes affirmative duties on government entities to ensure that people with disabilities, including those with cognitive and communication disabilities, have access to the services of such entities. Similar legal protections are included in the Americans with Disabilities Act. State and local courts have affirmative duties to modify policies and practices to ensure that people with disabilities have meaningful access to their programs and services.

It is within this legal framework of existing state and federal rights that California's limited conservatorship system operates. However, as the complaint filed by Spectrum Institute alleges, and as the evidence it has supplied to the Department of Justice shows, the limited conservatorship system has been operating in a manner that deliberately or negligently fails to recognize these existing rights. This system is operated by the judicial branch. As a result, the courts have been denying proposed limited conservatees and limited conservatees access to justice. Systemic failures have caused ongoing violations of Title II of the ADA and Section 504 of the Rehabilitation Act.

The remainder of this report discusses how a limited conservatorship proceeding is initiated, how the proceedings are supposed to function, and how Title II of the ADA applies to such proceedings and its participants. With this framework in mind, the report analyzes two sets of data – the activities of Attorney X and the practices in Courtroom X – and shows how those practices do not meet the requirements of Title II. This pattern of violations needs to be addressed by the DOJ.

The Petition

Proceedings in limited conservatorship cases are initiated by the filing of a petition with the Superior Court. The petition may be filed by the proposed conservatee, a spouse, relative, interested government agency, or any interested person or friend of the proposed conservatee.

In Los Angeles County, most petitioners do not have an attorney. Under contract with the Superior Court, Bet Tzedek Legal Services assists about 90% of petitioners to fill out the needed forms.

The petition must allege that the proposed conservatee is unable to provide for his or her basic needs for physical health, food, clothing, and shelter. It must also allege that alternatives to conservatorship have been explored and why they are not feasible. The petition must also name the person or persons whom the petitioner is asking the court to appoint as conservator.

If the proposed conservatee has a developmental disability, the petition must allege the nature and degree of the alleged disability, the specific duties and powers requested by the conservator, and the limitations of civil and legal rights requested to be included in the court's order of appointment.

A limited conservator will not be granted any of the following powers or controls over the limited conservatee unless those powers or controls are specifically requested in the petition for appointment of a limited conservator and granted by the court in its order appointing the limited conservator: (1) to fix the residence or specific dwelling of the limited conservatee; (2) access to the confidential records and papers of the limited conservatee; (3) to consent or withhold consent to the marriage of, or the entrance into a registered domestic partnership by, the limited conservatee; (4) the right of the limited conservatee to contract; (5) the power of the limited conservatee to give or withhold medical consent; (6) the limited conservatee's right to control his or her own social and sexual contacts and relationships; (7) decisions concerning the education of the limited conservatee.

As a result of this statutory restriction, virtually all petitions for a limited conservatorship specifically request that the court grant the limited conservator one or more of these powers and that the court place corresponding limits on the rights of the limited conservatee.

Once the petition is filed, the clerk must send a citation to the proposed conservatee to notify him or her of the right to oppose the petition, in whole or in part. A proposed conservatee must also be notified of the right to choose and be represented by legal counsel and the right to have legal counsel appointed if unable to retain legal counsel.

The petition, therefore frames the issues in the case: (1) whether a conservatorship is needed; (2) which, if any, of the seven powers should be granted to the conservator because the proposed conservatee lacks the capacity to make decisions in those areas; (3) whether lesser restrictive alternatives are not feasible in those areas; and (4) who should be appointed to act as conservator.

The petitioner must attach supplemental information, in a confidential form, explaining these allegations in greater detail. A capacity declaration must also be submitted containing statements by a medical doctor or psychologist explaining whether the proposed conservatee has or lacks the ability to make his or her own medical decisions. A capacity declaration is not statutorily required for any of the other seven powers. The petition must also allege whether the proposed conservatee is or is not able to complete an affidavit of voter registration.

The Proceedings

In addition to the petitioner, proposed conservator, proposed conservatee, and the court, there are several other participants who may be involved in a limited conservatorship proceeding. Mandatory participants include a court-appointed attorney, a court investigator, and a regional center representative. A court-appointed expert or a guardian ad litem may also be involved. Sometimes an objector participates. If a petition is granted, a conservator becomes an ongoing participant.

Attorney. 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.

Regional Center. In the case of any proceeding to establish a limited conservatorship for a person with developmental disabilities, within 30 days after the filing of a petition for limited conservatorship, a proposed limited conservatee, with his or her consent, *shall* be assessed at a regional center. The regional center shall submit a written report of its findings and recommendations to the court. A report shall include a description of the specific areas, nature, and degree of disability of the proposed limited conservatee. The findings and recommendations of the regional center are not binding upon the court.

Court Investigator. After a petition for conservatorship is filed, a court investigator *shall* interview the proposed conservatee personally, interview all petitioners and all proposed conservators, and interview all relatives within the first degree (parent, sibling, child). To the greatest extent practical, relatives of the second degree (grandparents, aunts, uncles), neighbors, and close friends should also be interviewed. The investigator shall determine whether the allegations in the petition are true. The investigator shall also determine whether he or she believes the proposed conservatee lacks capacity to make decisions and, if so, the observations that support such a belief. A determination must also be made as to whether the proposed conservatee is unable to complete an affidavit of voter registration. The investigator must submit a report on these issues to the court prior to a hearing.

Expert. An attorney representing a proposed conservatee may ask the court to appoint an expert to assist the attorney in developing evidence regarding issues that may arise in the proceeding. For example, an expert may be appointed to assess the capacity of a proposed conservatee to make decisions in connection with one or more of the powers being sought by the petitioner. It is not mandatory that such experts be involved in a conservatorship proceeding, but it is certainly appropriate considering that capacity assessments are outside of the scope of lay opinion.

Guardian Ad Litem. The court may, on its own motion or at the request of any interested person, appoint a guardian ad litem to represent the interest of any incapacitated person involved in a legal proceeding. Therefore, a guardian ad litem may be appointed to represent the interest of a proposed limited conservatee and is a possible participant in a limited conservatorship proceeding. A guardian ad litem is an officer of the court and as such acts as an agent of the court.

Objector. Any of the following persons may appear at the hearing to support or oppose the petition: (a) the proposed conservatee; (b) the spouse or registered domestic partner of the proposed conservatee; (c) a relative of the proposed conservatee; (d) any interested person or friend of the proposed conservatee.

The court shall hear and determine the matter of the establishment of the conservatorship according to the law and procedure relating to the trial of civil actions, including trial by jury if demanded by the proposed conservatee. Issues that are determined by the court shall be established by clear and convincing evidence.

At the hearing on the petition for appointment of a limited conservator for a developmentally disabled adult, the court shall: (1) inquire into the nature and extent of the general intellectual functioning of the individual alleged to be developmentally disabled; (2) evaluate the extent of the impairment of his or her adaptive behavior; (3) ascertain his or her capacity to care for himself or herself and his or her property; and (4) inquire into the qualifications, abilities, and capabilities of the person seeking appointment as limited conservator.

The proposed conservatee has the right to appear at the hearing and to oppose the petition, and in the case of an alleged developmentally disabled adult, to oppose the petition in part, by objecting to any or all of the requested duties or powers of the limited conservator.

If the court finds that the proposed limited conservatee lacks the capacity to perform all of the tasks necessary to provide properly for his or her own personal needs for physical health, food, clothing, or shelter, or to manage his or her own financial resources, the court shall appoint either a conservator or a limited conservator for the person or the estate, or the person and the estate.

The court shall define the powers and duties of the limited conservator so as to permit the developmentally disabled adult to care for himself or herself or to manage his or her financial resources corresponding to his or her ability to do so.

If a conservatorship is granted and the conservatee objects to the conservatorship, to some or all of the powers that have been granted to the conservator, to some or all of the restrictions on the rights of the conservatee, or to the selection of the person who will act as the conservator, the conservatee may file a notice of appeal. An appellate court may appoint an attorney to represent the conservatee on appeal. The court may affirm or reverse the order granting the conservatorship or may modify the terms and conditions of the conservatorship.

Title II Requirements

A person becomes a proposed limited conservatee when the clerk of the court sends the person a citation notifying him or her that a petition has been filed seeking to have the person declared to be a limited conservatee. By definition, the proposed limited conservatee has developmental disabilities that cause significant impairments to major life activities. As a result, proposed limited conservatees have disabilities within the meaning of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.

As involuntary participants in limited conservatorship proceedings – litigation that is controlled by the Superior Court – proposed limited conservatees and limited conservatees are qualified to participate in the programs, services, and activities operated by the Superior Court. They have no choice but to participate in limited conservatorship proceedings, especially after they are served with pleadings and/or adjudicated to be a limited conservatee under the jurisdiction and control of the Superior Court.

Under the ADA and Section 504, the terms “programs, services or activities” of the Superior Court, including its employees and court-appointed attorneys, cover everything these employees and agents do with respect to limited conservatees. In this case, the programs of the court governed by the ADA and Section 504 involve the administration of justice.

Normally, under the ADA and Section 504, a person with a disability has the burden of making a request for a disability accommodation or for a modification of policies and practices in order to give them meaningful access to the program in question. However, there is no such burden when the government entity operating the program: (1) knows the program participant has a disability that impairs his or her ability to have meaningful participation in the program; and (2) knows or reasonably should know that the nature of the disability is such that it precludes or impairs his or her ability to make a request for accommodation or modification. In such event, the program operator has an affirmative duty, without request, to develop an ADA plan and offer ADA services to maximize the likelihood of meaningful participation in the program.

The Superior Court knows that limited conservatees have disabilities that impair or preclude their ability to request an ADA accommodation or modification. It also knows that their disability is such that it impairs their ability to have meaningful participation in the program, namely, meaningful participation in the administration of justice unless appropriate accommodations are offered. The Superior Court has the same knowledge with respect to proposed limited conservatees.

Therefore, the Superior Court has had, and continues to have, an affirmative duty to develop, without request, disability accommodations and modifications sufficient to enable both classes of individuals meaningful access to the administration of justice.

As explained below, the most critical component of any such ADA accommodation is the appointment of an attorney who will assist these individuals in understanding, communicating, advocating, and defending, as may be necessary to receive justice in their cases.

Accommodations to Involuntary Litigants

Petitioners in limited conservatorship cases are voluntary litigants. They choose to file a petition. They have the choice to represent themselves or to hire an attorney to do so. By definition, the petitioners and the conservators they nominate in the petition do not have cognitive disabilities.

Despite their lack of cognitive disabilities, the Los Angeles Superior Court provides an accommodation to petitioners who do not have an attorney to help them fill out the necessary forms and navigate through the judicial process. The court contracts with Bet Tzedek, a nonprofit legal services organization, to operate self help clinics and seminars to assist “pro per” petitioners in probate conservatorship proceedings.

The court is theoretically willing to provide accommodations to proposed conservatees as well. However, it requires that they fill out an accommodation request form (MC-410) in which they must specify the accommodations they need. This, of course, is worthless to proposed conservatees who have intellectual and developmental disabilities who do not have an attorney.

If the court clerk were to send a conservatorship citation to an adult who in fact did not have a cognitive or communication disability, that person could gain access to justice much the same as

“pro per” defendants would in a criminal proceeding. They could indicate verbally or in writing that they oppose the petition or portions of it. They could go to the county law library and read the probate code and relevant case law about limited conservatorships. They could demand that all procedural protections should occur, such as an investigation by a court investigator, an assessment by a regional center, and an evaluation by a court-appointed psychologist or psychiatrist. They could demand an evidentiary hearing, even a jury trial, and insist that the petitioner prove all allegations by clear and convincing evidence. They could object to the use of hearsay and demand that witnesses be produced so they could be questioned in open court and under oath. They could use the subpoena power of the court to compel the attendance of witnesses on their own behalf. If they could not afford an attorney, they would be entitled to have one appointed – one who would advocate for their stated wishes, one who would adhere to ethical standards and who would provide them with effective assistance in defending their rights from being eroded. If an adverse order was entered against them, they could file a notice of appeal, submit an affidavit of indigency, and request the appointment of counsel on appeal.

But involuntary litigants in limited conservatorship proceedings do have cognitive and other mental or adaptive disabilities that prevent them from accessing justice on their own. They cannot file motions, raise objections, cross-examine witnesses, test the sufficiency of evidence, or produce evidence in support of the retention of their existing rights. They are not aware of the Americans with Disabilities Act or the existence or purpose of form MC-410. Their disabilities not only prevent them from participating in the litigation in a meaningful way, they prevent them from asking for a disability accommodation. They lack the ability to ask the court to modify established policies and usual practices to make adjustments to ensure that they have access to justice – the same type of access that people without developmental disabilities would have if they were involuntarily drawn into a court proceeding.

The Los Angeles Superior Court generally provides one, and only one, type of accommodation to proposed limited conservatees to ensure they have access to justice. That accommodation is a court-appointed attorney. Since proposed limited conservatees are generally indigent, and since they usually lack the capacity to enter into a contract (such a contract would be subject to challenge), they lack the ability to retain a private attorney. Therefore, their only method of access to justice, and meaningful participation in their case, is through the appointment of an attorney by the court.

The court operates a legal services program known as a Probate Volunteer Panel. Attorneys volunteer to have their name added to the PVP list of attorneys available for appointments to represent proposed conservatees. The court establishes the criteria for being added to the panel. It mandates that such attorneys attend training sessions conducted by the Los Angeles County Bar Association which are explicitly or implicitly approved by the presiding judge of the probate court. Court staff designates which attorneys are appointed to specific cases, under appointment procedures approved by the court. The presiding judge issues orders regarding the presumptive number of hours a PVP attorney may devote to a case. Judges in individual cases approve fee claims and issue orders requiring the county to pay the fees of these attorneys.

Because the PVP legal services program is operated by the Los Angeles Superior Court and funded by the County of Los Angeles, this program must comply with the requirements of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973. As involuntary litigants, proposed limited conservatees depend on these PVP attorneys for access to justice in legal proceedings that may deprive them of important statutory and constitutional rights.

Access to Justice Template

In constructing a template for access to justice in a limited conservatorship proceeding, we begin with the foundational principle that proposed conservatees are entitled to due process of law before significant statutory and constitutional rights are taken from them. When the proceeding begins, proposed conservatees with developmental disabilities have the same basic rights as do all other adults. During the proceeding, they may suffer the loss of some or all of these rights.

Because the rights that are at stake are so fundamental – freedom of speech, freedom of association, the right of privacy, and the liberty to make decisions regarding residence, education, and finances – proposed conservatees are entitled to due process of law during these proceedings. Due process of law is defined, in a general sense, as the process to which a litigant is entitled by law. The process to which a litigant is entitled may be based on state or federal statutes or constitutions.

Constitutional due process has two dimensions: procedural due process and substantive due process. Procedural due process, in the context of a limited conservatorship proceeding, may involve the right to have counsel appointed, the right to have effective assistance from such a court-appointed attorney, the right to notice and an opportunity to contest the petition, the right to present evidence, and the right to cross-examine witnesses. Substantive due process may involve the right not to lose important rights due to arbitrary or irrational standards or judicial decisions.

If a person of general intelligence and ability were given a citation by the court clerk and required to participate in a limited conservatorship proceeding, he or she could insist that all statutory and constitutional protections associated with due process protections be employed in the proceeding.

If represented by counsel, the person could insist that counsel demand the following protections be used in the case: (1) an investigation and report by a court investigator with all of the inquiries and attributes required by statute for such an investigation; (2) an assessment and report by a regional center, with the assessment done by a qualified individual on each of the seven powers; (3) that the court review and consider the investigator's report and the regional center report *prior* to issuing an order; (4) a thorough investigation of relevant statutory and case law by the attorney pertaining to the proceeding and pertaining to each right at risk of loss; and (5) a thorough factual investigation by the attorney of the basis for each allegation in the petition, which would include an examination of pertinent records and an interview of potential witnesses.

The records to be reviewed by the attorney would include: (1) the petition, medical capacity declaration, and confidential screening form; (2) school records, including the most recent IEP; (3) regional center records, including the most recent IPP and clinical evaluations in the litigant's file.

The person could insist that the attorney develop evidence by: (1) demanding an IPP review by the regional center regarding capacity in each of the seven areas and of any less restrictive alternatives in each of those areas, prior to the regional center report being formulated and submitted to the court; (2) personally interviewing the petitioner, proposed conservator, close relatives, neighbors, and friends regarding their observations of the person's abilities in each of the seven areas and regarding the appropriateness and qualifications of the person nominated as conservator; and (3) interviewing the professional who submitted the medical capacity declaration; and (4) having the court appoint one or more experts to evaluate the person's capacity to make decisions in each of the seven areas, especially if the person were to receive sufficient support through ancillary services.

The person could also insist that the attorney challenge allegations and evidence presented by the petitioner, especially regarding the lack of a proper foundation for any observations or opinions presented by the petitioner to the court on the issues in question. The lack of training or criteria or qualifications of the person writing the regional center report or of the court investigator regarding opinions rendered in his or her report could be raised.

The person could also require the attorney to file objections if an investigation was not done by a court investigator or if the investigator's report was not filed *prior* to the hearing on the petition. He or she could also insist that the attorney object if the regional center report was not filed *prior* to the hearing.

A proposed conservatee without a cognitive disability could also remind the attorney that he or she is entitled to have the attorney adhere to ethical requirements, including not disclosing to the court or parties to the case confidential communications from the client and not to disclose, without informed consent by the client, work product developed by the attorney during the course of representation. The attorney could also be reminded of his or her duty of loyalty to the client and that the attorney should not waive protections or surrender rights without the prior informed consent of the client.

The proposed conservatee would not have the right to insist that the attorney file baseless motions or make frivolous objections. However, the litigant could demand that any issue that was arguably meritorious should be raised. Given the standard of proof that allegations in the petition must be supported by clear and convincing proof – a very high standard – the attorney would undoubtedly have a legal toolbox full of procedural safeguards that he or she could use in testing the sufficiency of evidence in support of the petition.

The proposed conservatee could also have his or her attorney conduct an investigation into the suitability of the residence where he or she would live if the petition were granted. Perhaps there are people living in the household whose presence would place the proposed conservatee at risk.

If the attorney refused or failed to become familiar with applicable law, conduct a thorough factual investigation, raise objections or file motions that were arguably meritorious, violated ethical requirements or otherwise provided ineffective assistance, the litigant could demand a new attorney.

Finally, if an order of conservatorship was entered to which the conservatee objected or if the order was premised on procedural or substantive violations of law or ineffective assistance of counsel, the conservatee could file a notice of appeal to have the order reviewed by an appellate court.

This is what access to justice would look like in a limited conservatorship proceeding in which the proposed conservatee did not have a cognitive disability or did not lack capacity in one or more of the areas as alleged in the petition. These are the procedures that a person without a disability could do on his or her own if acting *pro per*. These are also the procedures, available through statute or required by constitutional due process, that such a litigant could insist that his or her privately retained or court-appointed attorney should do to defend against a petition that might be deficient in whole or in part.

Access to justice should not look any different for someone an intellectual disability in a limited conservatorship proceeding, even though he or she lacks the ability to insist on such protections.

However, in the case of someone with cognitive and communication disabilities, access to justice actually requires more than the procedures and processes described above. It requires that the court, and an attorney appointed by the court to represent the disabled client, comply with the requirements of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. The court is required to take affirmative actions to ensure access to justice for an involuntary litigant that the court knows or should know has such disabilities. To fulfill such a duty, the court must ensure that the attorney – virtually the only accommodation given to the litigant – is properly trained and has adequate qualifications to provide effective assistance to a client with such disabilities.

As an agent of the court for purposes of the ADA, the attorney must also take affirmative steps to ensure that he or she can communicate with the client and that the client is afforded an opportunity to share his or her wishes or views on the issues in the proceeding. This requires that the attorney investigate the client's methods of communication. Prior to ever attempting to interview the client, the attorney should have been trained on interviewing techniques to be used with clients who have intellectual and developmental disabilities, including the specific types of disabilities that the client has in a specific case. The attorney should contact the parents, caregivers, regional center worker and school personnel – even if only by telephone – to determine the best way, best time, and best place to interview the client. Review of regional center and school records prior to such an interview may be the best approach. In other words, an ADA accommodation and communication plan should be developed by the attorney at the very outset of the case. Failure to do this would be a violation of the ADA by the court, since the court is responsible for the errors and omissions of the attorneys it appoints when the court has failed to adopt performance standards for such attorneys.

It bears repeating that an attorney is not required to file frivolous motions, make baseless objections, or insist on procedures that clearly have no value other than delay or obstruction. However, an attorney cannot provide effective assistance and give a client access to justice without reviewing all applicable statutory and case law (including federal ADA law), conducting a thorough investigation, having appropriate experts appointed to evaluate capacities, exploring less restrictive alternatives, and testing the foundation and sufficiency of evidence produced by the petitioner in support of the allegations in the petition.

If an attorney does a thorough job of preparation, investigation, and testing of the sufficiency of the allegations and evidence of the petitioner, court investigator, and regional center, and finds no arguably meritorious issues to raise in objection to the petition or any of its allegations, the attorney need not demand an evidentiary hearing. Without such a demand, the court would be able to make a determination based on the pleadings, including declarations attached thereto. Under such circumstances, the granting of a petition without an evidentiary hearing would not be a denial of access to justice.

However, access to justice is denied when a court-appointed attorney is not properly trained, does not familiarize himself or herself with applicable law, fails to conduct a thorough investigation, or does not develop an ADA accommodation or communication plan for the client.

Unfortunately, attorneys on the PVP list maintained by the Los Angeles Superior Court have not been properly trained by the court. Training programs that the court mandates such attorneys attend have not included educational components, presentations, or materials, on the topics listed above. Furthermore, the court has not otherwise vetted individual attorneys to ensure they have proper qualifications or have received adequate training on these issues through other educational sources.

Access to Justice Reality

An analysis of two samples of cases give us a glimpse into the reality of how court-appointed attorneys are performing in limited conservatorship cases and how the court has been approving and ratifying the activities of such attorneys.

Prior to exploring the activities of Attorney X and the performance of attorneys in Courtroom X, a few preliminary observations are in order.

Whether Attorney X gets a passing grade for his performance in the 18 cases reviewed, depends on the benchmark to which his performance is compared. If it is contrasted with what he was taught in court-mandated training programs, and what the court has implicitly ratified by approving his fee claims for payment, then he probably would receive a passing grade.

By signing a general order setting a presumptive limit on hours of service at 12 hours, the court has indicated a policy decision to keep hours down. By approving fee claims in which attorneys sought payment for 6 hours or less, and allowing the attorney to be reappointed to dozens of future cases, the court has implicitly approved of the performance of the attorney in these specific cases. The pattern of approval and reappointment, without judicial criticism, is tantamount to an official stamp of approval of what the attorney did and did not do in these cases. The court examines the fee claims. The court reads the PVP report which details what the attorney did, and the court can note what the attorney did not do. In reviewing the fee claim and the PVP report, the court is aware of what documents the attorney did and did not review, of which people the attorney did and did not interview.

The performance of the attorney can also be compared with what attorneys are trained to do in the training program mandated by the court and conducted by the Los Angeles County Bar Association with the express or implicit approval of the court. The deficiencies of these programs have been explained in great detail in other exhibits submitted with the class action complaint. However, it is worth summarizing a few of them here.

The training programs conducted over the past several years have not included: (1) federal voting rights protections for people with disabilities; (2) Title II of the ADA and how attorneys can comply with the requirement that they provide cognitively disabled clients access to justice; (3) constitutional protections implicated in proceedings that attempt to restrict the social and sexual rights of people with developmental disabilities; (4) the rights guaranteed by the Lanterman Act and the regulations of DDS that interpret and implement that Act; (5) the due process right of limited conservatees to effective assistance of counsel and what that would entail in these proceedings; (6) the right of the attorney to request, on the client's behalf, an IPP review prior to the regional center assessment; (7) the prevalence of abuse against people with developmental disabilities, who the likely perpetrators are in such cases, signs and symptoms of abuse, and how to conduct investigations to discover possible abuse or neglect by those who are nominated as conservators; (8) forensic criteria for capacity to make decisions regarding each of the seven powers, especially the capacity to consent to sex; (9) how to challenge deficiencies in investigations, evaluations, and reports by regional centers and court investigators; (10) filing motions and making objections to create a record for appeal; and (11) how school personnel and school records are an important source of evidentiary information that might support the client retaining one or more rights or the viability of a less restrictive alternative.

When the performance of Attorney X and of the attorneys in Courtroom X are compared with the training programs they have attended, the attorneys would also receive a passing grade. The trainings have not created much in terms of expectations other than going through the motions and keeping the judges happy. The judges appear to be happiest when cases are expedited and fee claims are kept to a minimum.

On the other hand, when the performance of these attorneys is compared with the access to justice scenario that the ADA requires, the attorneys, and the court that has promoted, approved, and ratified such performances, would receive a failing grade.

The following pages and the attachments to this report show in great detail what the attorneys did and did not do in these cases. The data gathered in this investigation shows a pattern and practice of deficient performance, when the performance is judged by requirements of the ADA as to what procedural protections were available and were required or appropriate to provide access to justice.

Attorney X

A sample of 18 cases of Attorney X were examined to determine whether, in that sample, the attorney provided his clients with access to justice in limited conservatorship cases. This particular attorney was selected because the Disability and Abuse Project of Spectrum Institute had previous encounters with him in a specific case. His deficient performance in that case was summarized in a one-page document that was provided to the Department of Justice in connection with the class action complaint filed on June 26, 2015. We wanted to determine if his performance in that case was an exception or whether an examination of a sample of cases would show a pattern of similar deficient performance. As explained below, our analysis shows a pattern of deficient performance and a resulting denial of access to justice in all of the 18 cases reviewed.

In the overwhelming majority of cases reviewed of Attorney X, he submitted a fee claim for four hours of services performed. In a few, the claim was for six hours. It bears emphasis that he could have performed an additional six to eight hours of services and he would not have exceeded the presumptive 12 hour limit per case as established by the general orders of the presiding judge of the probate court. A copy of the general orders of three presiding judges are found in an appendix to this report.

Services that could have been performed by Attorney X, but were not, include: (1) objecting to the lack of an investigation by a court investigator and the lack of an investigator's report in any of these cases even though no investigator was involved in any of them; (2) reviewing school records for the 15 clients who were enrolled in school; (3) interviewing any staff members at these schools; (4) reviewing the regional center report in 3 cases; (5) interviewing the doctor who submitted the medical capacity declaration in any of the cases; (6) interviewing any of the relatives, other than the custodial parents, who were identified in the petition; (7) reviewing the most recent IPP report or any clinical evaluation reports in the regional center files in any of the cases; (8) asking for an expert to be appointed under Evidence Code Section 730 as authorized by law in any of these cases – especially in cases where the right to make sexual decisions was retained by the client upon recommendation of the attorney (BP148101, BP147961, BP146997, BP146995, BP147806) ; (9) requesting a special IPP review for conservatorship evaluation purposes in any of these cases even though the client has a right to such a review; and (10) developing an ADA accommodation and communication plan for clients in any of the cases.

In one case (BP147806), the petitioner did not seek to take away the social and sexual rights of the proposed conservatee and Attorney X stated in his report that the client was able to make his own decisions regarding social and sexual matters. However, when the court took away the client's right to make social and sexual decisions without an evidentiary hearing, the attorney did not file a notice of appeal on behalf of the client.

In another case (BP148644), the court removed the client's right to make decisions regarding his residence, despite recommendations by the attorney and the regional center that the client retain that right. There was no evidentiary hearing on the issue. The attorney did not file a notice of appeal on behalf of the client.

Attorney X failed to investigate the possibility of abuse in one case (BP145869) where evidence suggested that such abuse might be occurring. The client was enrolled in school but he refused to get on the bus to go to school. This conduct is consistent with the possibility of abuse occurring either on the bus or at school. The attorney should have contacted school officials to determine how long this refusal to get on the bus had been occurring. He should have contacted the client's doctor to see if there were any other signs or symptoms of abuse the doctor may have been aware of. He could have asked the court to appoint an investigator to delve deeper into this issue. He did not.

In one case (BP148644), the attorney did not read the confidential screening form. In another case (BP146995), he did not read the medical capacity declaration.

In one case (BP148595), the court disqualified the client from voting but allowed the client to retain the right to make decisions regarding sexual conduct. This seems rather arbitrary or irrational in that the risk of harm to self or others associated with bad decisions on sexual conduct is far greater than the risk of harm in connection with voting decisions. The attorney did not file a notice of appeal on the client's behalf so the client could challenge the denial of the right to vote.

In one case (BP148101), the attorney recommended that the client retain the right to make sexual decisions despite the fact that the medical capacity declaration showed the client to be very impaired. The attorney did not seek the appointment of an expert to evaluate capacity to make sexual decisions, nor did he review school records or talk to school personnel to determine whether the client had received sex education and to determine the level of the client's knowledge and understanding of the risks associated with sexual activity with another person.

The actions and omissions of Attorney X in representing clients in these cases shows a clear pattern of failing to insist that mandatory statutory protections be used (e.g., court investigator report) and of failing to utilize procedures that were not mandated by statute but were authorized by law and that would have increased access to justice and the likelihood of a fair and just result.

Courtroom X

An evaluation of 25 cases handled by six attorneys who represented proposed limited conservatees in Courtroom X shows a similar pattern of waiving procedural protections (court investigator reports and regional center reports) and failing to take advantage of procedures that were available and that would have increased access to justice and a fair result – many of which could have been utilized without exceeding the presumptive 12 hour limit for attorney services (per the general order of the presiding judge). This pattern was known to and ratified by the judge presiding in Courtroom X.

In each of these 25 cases, the regional center report was not reviewed by the attorney nor read by the court prior to or at the conservatorship hearing. At the urging or with the approval of the court, the regional center report was waived by the parties. One major purpose of such a hearing, of course, is to determine whether the proposed conservatee has or does not have capacity to make decisions in connection with the seven powers in question.

In the medical capacity declaration, the psychologist or physician renders an opinion only as to the lack of capacity of the adult to make medical decisions. No opinion is rendered on capacity in the other areas. The regional center report attempts to assess the abilities and disabilities of the client in all seven areas and makes a recommendation to the court as to which rights the client should retain. Despite the fact that no expert was appointed to assess capacity in these other areas, and despite the lack of a regional center report, the court proceeded to render orders regarding the granting of a conservatorship and which powers should be taken from the proposed conservatee. The court-appointed attorneys in each of these cases failed to object to the lack of a regional center report prior to the making of such orders. No continuances were requested.

The regional center reports were eventually filed in most of these cases, usually weeks, if not several months, after the court had already entered an order granting the conservatorship. In one case (VP014681) the report was filed 16 months after the conservatorship was granted. In another case (VP01486), Attorney A allowed the court to rush to judgment prior to the regional center report being filed, even though the attorney knew that an interdisciplinary team was meeting to review the case on November 28, 2012 (the client's 18th birthday). Instead of asking for a continuance to gain the benefit of this meeting, the attorney allowed the court, without objection, to grant the conservatorship on October 31, 2012, to become effective on November 28.

In some cases (VP104989, VP014477), the attorney was discharged from the case before the regional center report was filed. The attorney, therefore, would not have known whether the report contained recommendations that were inconsistent with the order granting conservatorship.

All of these attorneys also stipulated that the PVP report could be used in lieu of a court investigator report. The attorneys were not trained as investigators. They agreed to waive the investigator's report, a report required by law, even though they did not put in extra hours or perform extra services to make sure that the functions of the court investigator were fulfilled. For example, they did not interview first degree relatives of the proposed conservatee as the investigator is required to do by law. The law requires investigators to interview other relatives, neighbors, and close friends of the conservatee if that is feasible. Since these attorneys only spent three to seven hours on a case, it was feasible for them to interview such persons without going over the presumptive 12 hour limit for services. Such interviews could have elicited evidence that someone other than the nominated conservator should have been appointed. Evidence of abuse or neglect might have been discovered.

Similar to the activities of Attorney X, the attorneys whose performance were reviewed in the Courtroom X sample did not: (1) review an IEP report from school or interview school personnel; (2) review the most recent IPP report or clinical evaluation reports in the regional center files; (3) interview siblings or grandparents; and (4) object to the failure to have an investigation conducted by a court investigator or the lack of a court investigator report. The attorneys did not develop an ADA accommodation or communication plan to increase their ability to communicate with their clients and to increase the possibility of their clients playing a meaningful role in their cases.

Title II Violations

There is no need to belabor the points made by the facts as shown in the review of these samples of cases or as argued in the complaint and various exhibits. Just a quick summary will suffice.

Title II of the ADA and Section 504 of the Rehabilitation Act place an affirmative duty on state and local courts to take steps to ensure that litigants with cognitive and communication disabilities receive access to justice. This is especially so when the litigants are forced to participate in legal proceedings. The duty is amplified, and requires the court to take action on its own motion, when the court is aware that these involuntary litigants have mental or emotional difficulties that impair their ability to participate in legal proceedings in a meaningful manner unless they receive accommodations.

Under circumstances such as those associated with limited conservatorship proceedings, the court must provide accommodations, and modify usual policies and practices, to ensure access to justice for these litigants. For all practical purposes, the only accommodation the court provides to these litigants is a court-appointed attorney.

Having provided such an accommodation, it is the responsibility of the court to ensure that these attorneys are properly trained to represent clients with intellectual and developmental disabilities. The court has failed to do so.

Since proposed conservatees lack the ability to know when their attorneys are performing in a deficient manner, and lack the ability to complain and demand a new attorney, it is the responsibility of the court to put various quality assurance controls in place to ensure these attorneys are giving the clients access to justice. The court has not done so.

In sum, the materials submitted along with the complaint, as augmented by this new data, show a pattern of ADA violations by court-appointed attorneys, by the legal services program operated by the court, and by the training programs mandated by and implicitly approved by the court. The Los Angeles Superior Court is ultimately responsible for these violations.

Remedies

The first step in the remedial process is for an investigation to be conducted by the Department of Justice into the policies and practices of the Los Angeles Superior Court in regard to the legal services program it operates in connection with limited conservatorship proceedings. The investigation should look into the policies of the court and the practices of the judges who oversee the conduct of the PVP attorneys. Training programs mandated by the court should be reviewed. The lack of performance standards for these attorneys should be noted. Alternatives to having the court operate the legal services program should be explored.

We believe that a thorough investigation by the DOJ will validate the allegations made in the class action complaint. Perhaps a consent decree can be negotiated with the Superior Court. If not, there is always the option of the DOJ filing a complaint in federal court to force the Superior Court to comply with the requirements of the ADA and Section 504 in limited conservatorship proceedings. Hopefully, it will not come to that. Hopefully, the court will agree to comply with the ADA.

Appendix 1:

Estimated Time for Legal Services When Using Available Resources and Procedures

1. Read petition, capacity declaration, and confidential screening form	1.0
2. Calls to parents, school, regional center to develop an ADA accommodation and communication plan	1.5
3. Gather and review most recent IPP and clinical evaluations from regional center file and IEP from school file	2.0
4. Interview at proposed residence of client, with client, petitioner, and nominated conservator present (including travel time)	4.0
5. Interview client alone in setting other than at parent's home (e.g., school) (including travel time)	3.5
6. Phone interview with teacher, teacher's aide, and caregivers, if any	1.5
7. Calls to relatives, neighbors, and close friends of client	2.0
8. Review regional center report	1.0
9. Call to practitioner who submitted medical capacity declaration25
10. In some cases, request and attend a special IPP meeting for evaluation of capacities and exploration of lesser restrictive alternatives (including travel time)	3.5
11. In some cases, file ex parte request for appointment of expert to evaluate various capacities, consult with expert, and read expert's report	1.5
12. Prepare and submit PVP report (without violating confidences or being disloyal to client)	1.0
13. Attend court hearing (including travel time)	2.5
Total time for services	25.5 hours

Note: Even if preliminary review of records indicates that a conservatorship is warranted, a thorough investigation must be done to determine if the proposed residence and the proposed conservators are appropriate, considering the high rate of abuse of people with disabilities. (See "Trauma Informed Justice: A Necessary Paradigm Shift for the Limited Conservatorship System, located in Appendix 8, at page 80)

APPENDIX 2

Sample I: Practices of Attorney X

Case # BP149244	Filed on 2-10-14	Order granted on 5-2-14
Order by Judge – Murphy	Attorney – X	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all 7		
PVP report in lieu of court investigator report – yes		
Disabilities of Client – cp, blind, not verbal		
Client in School –	Relatives –	
RC report filed – timely	RC report recommended – all 7	
PVP Total Hours – 4	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – yes	CI report reviewed – no	
Other docs reviewed – petition, conf screening form		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all 7 areas	
Fee Detail: doc rev = .7 letter to home = .2 home visit = 1.0 report = 1.0 court = 1.0		
Comments		

The abbreviations used for clinical evaluations are initials for terms used in these reports. The initials mr are used here because that is the term used in the reports.

Case # BP149234	Filed on 2-10-14	Order granted on 5-814
Order by Judge – Murphy	Attorney – X	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all 7		
PVP report in lieu of court investigator report – yes		
Disabilities of Client – down syndrome		
Client in School – yes	Relatives – siblings, grandmother	
RC report filed – timely	RC powers recommended – all 7	
PVP Total Hours – 4	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – yes	CI report reviewed – no	
Other docs reviewed – petition, conf screening form, rc report		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all 7 areas	
Fee Detail: doc rev = .5 letter to home = .2 home visit = 1.3 report = 1.0 court = 1.0		
Comments		

Case # VP014682	Filed on 8-22-12	Order granted on 5-6-14
Order by Judge – Murphy	Attorney – X	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all but marriage and social/sexual		
PVP report in lieu of court investigator report – yes		
Disabilities of Client – autism, limited verbal		
Client in School – yes	Relatives – father (has attorney)	
RC report filed – timely	RC powers recommended – unknown	
PVP Total Hours – 4	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – yes	CI report reviewed – no	
Other docs reviewed – petition, conf screening form, emails from others, probate notes		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all but social/sexual	
<p>Fee Detail: doc rev = 1.0 + .4 + 1.0 letters to home = .6 home visit = .5 report = 1.0 court = .5</p>		
Comments – case of Stephen Lopate		

Case # BP148644	Filed on 1-21-14	Order granted on 3-24-14
Order by Judge – Conway	Attorney – X	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all but social/sexual, marriage, educational		
PVP report in lieu of court investigator report – yes		
Disabilities of Client – mild m/r, verbal		
Client in School – yes	Relatives – unknown	
RC report filed – timely	RC powers recommended – medical, contract, confid records	
PVP Total Hours – 6	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – yes	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, NOT conf screening form		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – same as RC	
Fee Detail: doc rev = 1.0 home visit = 2.0 report = 1.5 court = 1.5		
Comments – court removed power over residence despite pvp and rc recommendations; no notice of appeal despite adverse residence order		

Case # BP148035	Filed on 12-23-13	Order granted on 3-27-14
Order by Judge – Goetz	Attorney – X	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all but social/sexual, marriage		
PVP report in lieu of court investigator report – yes		
Disabilities of Client – williams syndrome, verbal		
Client in School – yes	Relatives – brother, grandmother	
RC report filed – timely	RC powers recommended – unknown	
PVP Total Hours – 6	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – yes	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all bur marriage, social/sexual	
Fee Detail: doc rev = .5 home visit = 2.0 report = 1.5 court = 2.0		
Comments –		

Case # BP148595	Filed on 1-22-14	Order granted on 3-28-14
Order by Judge – Murphy	Attorney – X	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all but social/sexual		
PVP report in lieu of court investigator report – yes		
Disabilities of Client – down syndrome, verbal		
Client in School – yes	Relatives – siblings and grandparents	
RC report filed – timely	RC powers recommended – all but marriage, social/sexual	
PVP Total Hours – 4	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – yes	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form, rc report		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all but social/sexual	
<p>Fee Detail: doc reviewed = .3 Letter = .2 home visit = 1.0 report = 1.5 court = 1.0</p>		
Capacity dec shows client is rather high functioning		
Comments – pvp said that since marriage is contractual, client should not keep marriage;		
this reasoning is inconsistent with what he did in another case; court disqualified client from voting, but client kept sexual rights? Capacity to have sex with another person but not vote?		

Case # BP148101	Filed on 12-23-13	Order granted on 4-14-14
Order by Judge – Murphy	Attorney – X	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all but social/sexual and marriage		
PVP report in lieu of court investigator report – yes		
Disabilities of Client – down syndrome, verbal		
Client in School – yes	Relatives – siblings and grandparents and father	
RC report filed – timely	RC powers recommended – unknown	
PVP Total Hours – 4	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – yes	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form, rc report		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all but marriage, social/sexual	
Fee Detail: doc reviewed = 1.0 home visit = 1.0 report = 1.0 court = 1.0		
Comments – med capacity dec shows client is very impaired, but pvp was ok with client		
retaining social/sexual and marriage; no 730 expert sought on sexual capacity		

Case # BP147961	Filed on 12-19-13	Order granted on 3-28-14
Order by Judge – Murphy	Attorney – X	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all but social/sexual and marriage		
PVP report in lieu of court investigator report – yes		
Disabilities of Client – autism, dev challenged		
Client in School – yes	Relatives – father and brother	
RC report filed – timely	RC powers recommended – all but social/sexual	
PVP Total Hours – 4	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – yes	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form, rc report		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all but social/sexual (per rc)	
Fee Detail: doc reviewed = .8 Letter = .2 home visit = 1.0 report = 1.0 court = 1.0		
Comments – med capacity dec shows severe autism with mild/mod mental impairments;		
although retaining social/sexual, no 730 expert sought on sexual capacity		

Case # BP147290	Filed on 1-27-13	Order granted on 4-18-14
Order by Judge – Green	Attorney – X	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all 7		
PVP report in lieu of court investigator report – yes		
Disabilities of Client – mr and adhd, verbal		
Client in School – yes	Relatives – unknown	
RC report filed – timely	RC powers recommended – unknown	
PVP Total Hours – 6	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – yes	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form, rc report		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all 7 areas	
<p>Fee Detail: doc reviewed = .5 Call re visit = .5 home visit = 2.0 report = 1,0 court = 2.0</p>		
Comments – cap dec shows major mental impairments		

Case # BP147093	Filed on 11-14-13	Order granted on 2-28-14
Order by Judge – Murphy	Attorney – X	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all 7		
PVP report in lieu of court investigator report – yes		
Disabilities of Client – down syndrome, severe mr, hearing impaired, sign language		
Client in School – yes	Relatives – grandparents, siblings	
RC report filed – timely	RC powers recommended – unknown	
PVP Total Hours – 4	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – yes	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form, rc report		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all 7	
Fee Detail: doc reviewed = .4 Leter = .1 home visit = 1.5 report = 1.0 court = 1.0		
Comments:		

Case # BP146997	Filed on 11-14-2013	Order granted on 2-19-14
Order by Judge – Murphy	Attorney – X	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all but social/sexual		
PVP report in lieu of court investigator report – yes		
Disabilities of Client – mild mr		
Client in School – yes	Relatives – siblings and grandparents	
RC report filed – timely	RC powers recommended – unknown	
PVP Total Hours – 4	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – yes	CI report reviewed – no	
Other docs reviewed – petition, conf screening form, rc report, N		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all but social/sexual & residence	
Fee Detail: doc reviewed = .8 Letter = .2 home visit = 1.0 Pvp report = 1.0 court = 1.0		
Comments – med capacity dec shows client is rather high functioning		
although retaining social/sexual, no 730 expert sought on sexual capacity		

Case # BP146995	Filed on 11-14-13	Order granted on 3-6-14
Order by Judge – Murphy	Attorney – X	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all but social/sexual		
PVP report in lieu of court investigator report – yes		
Disabilities of Client – mild mr, verbal		
Client in School – yes	Relatives – siblings and grandparents and father	
RC report filed – timely	RC powers recommended – unknown	
PVP Total Hours – 4	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – yes	CI report reviewed – no	
Other docs reviewed – petition, conf screening form, rc report, NOT cap dec		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all but social/sexual	
Fee Detail: doc reviewed = .8 Letter = .2 home visit = 1.0 Pvp report = 1.0 court = 1.0		
Comments – med capacity dec shows client is rather high functioning;		
although retaining social/sexual, no 730 expert sought on sexual capacity		

Case # BP147806	Filed on 12-17-13	Order granted on 2-13-14
Order by Judge – Levanas	Attorney – X	Bet Tzedek Case – no
		petitioner has attorney
Powers Requested – all but social/sexual		
Powers Order granted – all 7, despite petition and pvp recommendations (no rc report)		
PVP report in lieu of court investigator report – yes		
Disabilities of Client – high functioning aspergers, autisn, add		
Client in School – no	Relatives – parents in Ohio	
RC report filed – no	RC powers recommended – no report - from out of state	
PVP Total Hours –	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – no	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form, adaptive function report		
Home Interview – yes*	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all but social/sexual	
Fee Detail:		
Comments – employed at skill center; * lives in group home; was under Ohio guardianship		
no objection to court taking social/sexual rights; no appeal, no 730 expert		

Case # BP146765	Filed on 11-6-13	Order granted on 1-28-14
Order by Judge – Murphy	Attorney – X	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all 7		
PVP report in lieu of court investigator report – yes		
Disabilities of Client – cp, mr, non-verbal, non-ambulatory, incontinent		
Client in School – yes	Relatives – sister	
RC report filed – no	RC powers recommended – unknown	
PVP Total Hours – 4	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – no	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form, rc report		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all 7	
<p>Fee Detail: doc reviewed = .5 Letter = .1 home visit = 1.4 Pvp report = 1.0 court = 1.0</p>		
Comments – med capacity dec shows client is severely impaired		

Case # BP146766	Filed on 11-6-13	Order granted on 4-21-14
Order by Judge – Murphy	Attorney – X	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all 7		
PVP report in lieu of court investigator report – yes		
Disabilities of Client – cp, seizures, wheelchair		
Client in School – yes	Relatives – sister with whereabouts unknown	
RC report filed – no	RC powers recommended – unknown	
PVP Total Hours – 4	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – no	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form, rc report		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all 7	
Fee Detail: doc reviewed = 1.0 Letter = .5 home visit = .5 report = 1.0 court = .8		
Comments –		

Case # BP146568	Filed on 10-30-13	Order granted on 1-28-14
Order by Judge – Murphy	Attorney – X	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all 7		
PVP report in lieu of court investigator report – yes		
Disabilities of Client – cp and mr		
Client in School – yes	Relatives – grandparents and father	
RC report filed – timely	RC powers recommended – unknown	
PVP Total Hours – 4	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – yes	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form, rc report		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all 7	
Fee Detail: doc reviewed = .4 Letter = .1 home visit = 1.0 report = 1.5 court = 1.0		
Comments –		

Case # BP146714	Filed on 11-6-13	Order granted on 1-14-14
Order by Judge – Paul	Attorney – X	Bet Tzedek Case – no
Powers Requested – all 7		
Powers Order granted – all 7		
PVP report in lieu of court investigator report – yes		
Disabilities of Client – mild mr, verbal, blind		
Client in School – ?	Relatives – brother, grandparents	
RC report filed – timely	RC powers recommended – unknown	
PVP Total Hours – 6	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – yes	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form, rc report		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all 7	
Fee Detail: doc reviewed = 1.0 Letter = .2 home visit = 1.5 report = 1.3 court = 2.0		
Comments –		

Case # BP145869	Filed on 10-9-13	Order granted on 12-10-13
Order by Judge – Steele	Attorney – X	Bet Tzedek Case – *
		* Atty Bertha Hayden
Powers Requested – all 7		
Powers Order granted – all 7		
PVP report in lieu of court investigator report – yes		
Disabilities of Client – autism, mr, nonverbal		
Client in School – *	Relatives – siblings and parents	
enrolled but refuses to go		
RC report filed – timely	RC powers recommended – unknown	
PVP Total Hours – 6	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – yes	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form, rc report		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all 7	
Fee Detail: doc reviewed = 1.0 Letter = .5 home visit = 1.0 report = 1.5 court = 2.0		
Comments – should have been a thorough investigation due to refusal to get on bus		
to go to school; this could be a case of abuse on the bus or at school		

APPENDIX 3

Sample II: Practices in Courtroom X

Case # VP014808	Filed on 10-17-12	Order granted on 12-26-12
Order by Judge – Murphy	Attorney – Attorney A	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all 7		
PVP report in lieu of court investigator report – silent on this		
Disabilities of Client – cp, blind, mr, nonverbal		
Client in School – yes	Relatives – father, siblings, grandparents	
RC report filed – 7-31-13	RC powers recommended – unknown	
Stipulation to no RC report for hearing – yes		
PVP Total Hours – 6	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – no	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all 7	
<p>Fee Detail: doc reviewed = .1, phone call to petitioner = .1 Call to rc = .1 home visit incl. travel = 3.0 Pvp report = 1.0, prepare order, letters, duties = .6 court = 1.0</p>		
Comments – rc report filed 7 months after conservatorship granted		

Case # VP014805	Filed on 10-17-12	Order granted on 12-26-12
Order by Judge – Murphy	Attorney – Attorney A	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all 7		
PVP report in lieu of court investigator report – silent on this		
Disabilities of Client – severe autism		
Client in School – no	Relatives – father, sibling, grandparent	
RC report filed – 1-16-13	RC powers recommended – unknown	
Stipulation to no RC report for hearing – yes		
PVP Total Hours – 6	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – no	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all 7	
<p>Fee Detail: doc reviewed = .1, phone call to petitioner = .1 Calls to rc and left messages = .2 home visit incl. travel = 3.0 Pvp report = 1.0, prepare order, letters, duties = .5 court = 1.0</p>		
Comments – rc report filed 3 weeks after conservatorship granted		
court investigator annual report filed 9-26-14, 21 months after order granted		

Case # VP014785	Filed on 10-10-12	Order granted on 12-26-12
Order by Judge – Murphy	Attorney – Attorney A	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all 7		
PVP report in lieu of court investigator report – silent on this		
Disabilities of Client – cp		
Client in School – yes	Relatives – siblings	
RC report filed – 4-16-13	RC powers recommended – unknown	
Stipulation to no RC report for hearing – yes		
PVP Total Hours – 6.15	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – no	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – ?	PVP alleges incapacity in – all 7	
<p>Fee Detail: doc reviewed = .2, phone call to petitioner = .1 Call to rc and left message = .1 voice message from rc = .1 home visit incl. travel = 3.0 Pvp report = 1.0, prepare order, letters, duties = .65 court = 1.0</p>		
Comments – rc report filed 4 months after conservatorship granted		

Case # VP014686	Filed on 8-22-12	Order granted on 10-31-12
Order by Judge – Murphy	Attorney – Attorney A	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all 7		
PVP report in lieu of court investigator report – silent on this		
Disabilities of Client – mild mr, verbal (will turn 18 on 11-28-12)		
Client in School – yes	Relatives – brother	
RC report filed – 4-13-13	RC powers recommended – unknown	
Stipulation to no RC report for hearing – ?		
PVP Total Hours – 6	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – no	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all 7	
<p>Fee Detail: doc reviewed = .1, phone calls to petitioner = .1 Voice mail messages to rc = .1 home visit incl. travel = 2.0 Pvp report = 1.0, prepare order, letters, duties = .5 court = .9</p>		
Comments – rc report filed 5 months after conservatorship granted;		
IDT meeting at RC scheduled for 11-28-12 and yet they rushed through the order prior to this		

Case # VP014681	Filed on 8-22-12	Order granted on 10-31-12
Order by Judge – Murphy	Attorney – Attorney A	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all 7		
PVP report in lieu of court investigator report – silent on this		
Disabilities of Client – mr, down syndrome		
Client in School – yes	Relatives – many siblings	
RC report filed – 3-7-14	RC powers recommended – unknown	
Stipulation to no RC report for hearing – yes		
PVP Total Hours – 5.7	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – no	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all 7	
<p>Fee Detail: doc reviewed = .1, phone call to petitioner = .1 Call to rc = .1 home visit incl. travel = 3.0 Pvp report = 1.0, prepare order, letters, duties = .5 court = .9</p>		
Comments – rc report may have been filed 16 months after conservatorship granted		

Case # VP014551	Filed on 6-13-12	Order granted on 8-22-12
Order by Judge – Murphy	Attorney – Attorney A	Bet Tzedek Case – no
Powers Requested – all 7		
Powers Order granted – all 7		
PVP report in lieu of court investigator report – silent on this		
Disabilities of Client – autism, mild mental deficits, blind		
Client in School – yes	Relatives – sister, grandparents	
RC report filed – 10-4-12	RC powers recommended – unknown	
Stipulation to no RC report for hearing – yes		
PVP Total Hours – 5.9	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – no	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all 7	
<p>Fee Detail: doc reviewed = .1, phone call to petitioner = .1 Calls to rc = .2 home visit incl. travel = 3.0 Pvp report = 1.0, prepare order, letters, duties = .5 court = 1.0</p>		
Comments – rc report filed about 2 months after conservatorship granted		

Case # VP014477	Filed on 5-9-12	Order granted on 7-25-12
Order by Judge – Murphy	Attorney – Attorney A	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all 7		
PVP report in lieu of court investigator report – silent on this		
Disabilities of Client – cp, mr, nonverbal		
Client in School – no	Relatives – father and siblings	
RC report filed – 8-22-12	RC powers recommended – unknown	
Stipulation to no RC report for hearing – yes		
PVP Total Hours – 7.0	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – no	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all 7	
<p>Fee Detail: doc reviewed = .1, phone calls to petitioner = .4 Calls and voice mails to rc = .2 home visit incl. travel = 3.0 Pvp report = 1.0, prepare order, letters, duties = .5 court = 1.5</p>		
Comments – rc report filed 1 month after conservatorship granted		

Case # VP014475	Filed on 5-9-12	Order granted on 7-5-12
Order by Judge – Murphy	Attorney – Attorney A	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all 7		
PVP report in lieu of court investigator report – silent on this		
Disabilities of Client –		
Client in School – yes	Relatives – grandparents and half-sibling	
RC report filed – 2013	RC powers recommended – unknown	
Stipulation to no RC report for hearing – yes		
PVP Total Hours – 7.0	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – no	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all 7	
<p>Fee Detail:</p> <p>doc reviewed = .1, phone calls to petitioner = .2</p> <p>Calls and voice mail to rc = .1</p> <p>home visit incl. travel = 3.0</p> <p>Pvp report = 1.0, prepare order, letters, duties = .5</p> <p>court = 1.5</p>		
Comments – rc report filed several months after conservatorship granted		

Case # VP014989	Filed on 1-23-13	Order granted on 4-29-13
Order by Judge – Murphy	Attorney – Attorney B	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all 7		
PVP report in lieu of court investigator report – yes *		* see image
Disabilities of Client – severe speech impairment due to chromosomal abnormality		
Client in School – yes	Relatives – grandparents	
RC report filed – 5-7-13	RC powers recommended – unknown	
Stipulation to no RC report for hearing – unknown		
PVP Total Hours – 7.0	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – no	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all 7	
Fee Detail: attorney did not submit fee details he did interview rc rep prior to the hearing, but before an assessment was done by rc		
Comments – rc report filed 1 month after conservatorship granted;		
attorney was discharged prior to the filing of the rc report		

Case # VP014477	Filed on 12-20-12	Order granted on 3-13-13
Order by Judge – Murphy	Attorney – Attorney B	Bet Tzedek Case – no
		private attorney
Powers Requested – all 7		
Powers Order granted – all 7, despite rc recommended client keep social/sexual, marriage*		
PVP report in lieu of court investigator report – yes		* see image
Disabilities of Client – down syndrome, verbal		
Client in School – yes	Relatives – father who lives at different residence	
RC report filed – 8-22-12	RC powers recommended – retain social/sexual, marriage *	
Stipulation to no RC report for hearing – yes		
PVP Total Hours – 4.5	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – no	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all 7	
Fee Detail: attorney did not submit details; he did interview rc rep		
Comments – rc report filed 6-14-13, 3 months after attorney discharged (when order signed)		
court investigator annual report filed 7-25-14		

Case # VP014842	Filed on 10-31-12	Order granted on 1-9-13
Order by Judge – Murphy	Attorney – Attorney B	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all 7		
PVP report in lieu of court investigator report – yes		
Disabilities of Client – autism with mr, verbal (cap dec shows mild impairments)* see image		
Client in School – yes	Relatives – siblings and grandparents	
RC report filed – late	RC powers recommended – unknown	
Stipulation to no RC report for hearing – yes		
PVP Total Hours – 7.0	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – no	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all 7	
Fee Detail:		
Comments – report filed after order granted; no 730 expert for evaluation even though		
impairments seem mild according to medical capacity declaration		

Case # VP014841	Filed on 10-31-12	Order granted on 1-9-13
Order by Judge – Murphy	Attorney – Attorney B	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all 7		
PVP report in lieu of court investigator report – yes		
Disabilities of Client – severe mr, nonverbal, autism		
Client in School – yes	Relatives – grandparents and siblings	
RC report filed – after order	RC powers recommended – unknown	
Stipulation to no RC report for hearing – yes		
PVP Total Hours – 3.0	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – no	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all 7	
Fee Detail: no detail given		
Comments – rc report filed after conservatorship granted		
attorney did talk to rc worker		

Case # VP014824	Filed on 10-24-12	Order granted on 12-26-12
Order by Judge – Murphy	Attorney – Attorney B	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all 7		
PVP report in lieu of court investigator report – yes		
Disabilities of Client – down syndrome, nonverbal		
Client in School –yes	Relatives – siblings	
RC report filed – 3-28-13	RC powers recommended – unknown	
Stipulation to no RC report for hearing – yes		
PVP Total Hours – 5.0	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – no	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all 7	
Fee Detail: no detail given		
Comments – rc report filed 3 months after conservatorship granted* (see image)		
attorney spoke with rc worker		

Case # VP014783	Filed on 10-10-12	Order granted on 12-26-12
Order by Judge – Murphy	Attorney – Attorney B	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all 7		
PVP report in lieu of court investigator report – silent on this		
Disabilities of Client – down syndrome, nonverbal		
Client in School – no	Relatives – siblings	
RC report filed – 3-28-13	RC powers recommended – unknown	
Stipulation to no RC report for hearing – yes		
PVP Total Hours – 5.0	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – no	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all 7	
Fee Detail: no details given		
Comments – rc report filed 3 months after conservatorship granted		

Case # VP014665	Filed on 8-15-12	Order granted on 10-24-12
Order by Judge – Murphy	Attorney – Attorney B	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all 7		
PVP report in lieu of court investigator report – silent on this		
Disabilities of Client – cp, severe mr, respirator		
Client in School – yes	Relatives – siblings	
RC report filed – 12-10-12	RC powers recommended – unknown	
Stipulation to no RC report for hearing – yes		
PVP Total Hours – 4.0	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – no	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all 7	
Fee Detail: no details given		
Comments – rc report filed 2 months after conservatorship granted;		
attorney spoke with caregiver (sster) and rc worker		

Case # VP014317	Filed on 2-22--12	Order granted on 6-6-12
Order by Judge – Murphy	Attorney – Attorney C	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all 7		
PVP report in lieu of court investigator report – silent on this		
Disabilities of Client – down syndrome, verbal		
Client in School – yes	Relatives – grandparents and siblings	
RC report filed – 3-21-13*	RC powers recommended – unknown	
Stipulation to no RC report for hearing – yes		
PVP Total Hours – 5.0	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – no	CI report reviewed – no	
Other docs reviewed – petition* (see image) no review of rc, cap dec, or csf		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all 7	
Fee Detail: no details given		
Comments – rc report filed 9 months after conservatorship granted		
cap dec shows mild to moderate deficits, varies per situation* (see image)		

Case # VP014039	Filed on 10-5-11	Order granted on 12-13-11
Order by Judge – Murphy	Attorney – Attorney C	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all 7		
PVP report in lieu of court investigator report – silent on this		
Disabilities of Client – autism, mild to mod mr (has daily living skills)		
Client in School – yes	Relatives – siblings	
RC report filed – after order	RC powers recommended – unknown	
Stipulation to no RC report for hearing – yes		
PVP Total Hours – 5.5	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – no	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all 7	
Fee Detail: no details given		
Comments – rc report filed 10 months after conservatorship granted		

Case # VP014129	Filed on 11-16-11	Order granted on 3-7-12
Order by Judge – Murphy	Attorney – Attorney C	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all 7		
PVP report in lieu of court investigator report – silent on this		
Disabilities of Client – cp, mr, verbal, meningitis, hypocephaly		
Client in School – yes	Relatives – siblings	
RC report filed – 7-12-12	RC powers recommended – unknown	
Stipulation to no RC report for hearing – no		
PVP Total Hours – 7.0	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – no	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, NOT conf screening form		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all 7	
Fee Detail: no details given		
Comments – rc report filed 4 months after conservatorship granted		

Case # VP014036	Filed on 10-5-11	Order granted on 12-13-11
Order by Judge – Murphy	Attorney – Attorney C	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all 7		
PVP report in lieu of court investigator report – silent on this		
Disabilities of Client – profound mr, nonverbal, quad		
Client in School – yes	Relatives – grandparents and siblings	
RC report filed – 3-23-12	RC powers recommended – unknown	
Stipulation to no RC report for hearing – yes		
PVP Total Hours – 7.0	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – no	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all 7	
Fee Detail: no detail given		
Comments – rc report filed 4 months after conservatorship granted		
court investigator annual report filed 2-6-13		

Case # VP014532	Filed on 6-6-12	Order granted on 8-22-12
Order by Judge – Murphy	Attorney – Attorney D	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all 7		
PVP report in lieu of court investigator report – silent on this		
Disabilities of Client – mr and neurocephaly		
Client in School – yes	Relatives – grandfather	
RC report filed – 10-10-12	RC powers recommended – unknown	
Stipulation to no RC report for hearing – yes		
PVP Total Hours – 4.0	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – no	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all 7	
Fee Detail: doc review = 1.0, letters to pet = .3, letter to rc = .2 Hoe interview = .7, pvp report = 1.0, court = .7		
Comments – rc report filed 2 months after conservatorship granted		

Case # VP014192	Filed on 12-21-11	Order granted on 8-1-12
Order by Judge – Murphy	Attorney – Attorney E	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all 7		
PVP report in lieu of court investigator report – silent on this		
Disabilities of Client – cp, mr		
Client in School – yes	Relatives – grandparents and siblings	
RC report filed – 1-11-13	RC powers recommended – unknown	
Stipulation to no RC report for hearing – yes		
PVP Total Hours – 6.0	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – no	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all 7	
Fee Detail: no details given		
Comments – rc report filed 5 months after conservatorship granted		
attorney spoke with rc worker		

Case # VP014477	Filed on 3-14-12	Order granted on 6-20-12
Order by Judge – Murphy	Attorney – Attorney E	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all 7		
PVP report in lieu of court investigator report – silent on this		
Disabilities of Client – autism and mild mr		
Client in School – no	Relatives – grandparents and siblings	
RC report filed – 12-17-12	RC powers recommended – unknown	
Stipulation to no RC report for hearing – yes		
PVP Total Hours – 5.0	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – no	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form		
Home Interview – at office	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all 7	
Fee Detail: no details given		
Comments – rc report filed 6 months after conservatorship granted		

Case # VP014710	Filed on 9-5-12	Order granted on 11-14-12
Order by Judge – Murphy	Attorney – Attorney F	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all but social/sexual		
PVP report in lieu of court investigator report – silent on this		
Disabilities of Client – mild to moderate mr		
Client in School – yes	Relatives – siblings	
RC report filed – after order	RC powers recommended – unknown	
Stipulation to no RC report for hearing – yes		
PVP Total Hours – 7.4	IEP Reviewed – no	IPP Reviewed – no
RC report reviewed – no	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form		
Home Interview – yes	School Interview – no	Doctor Interview – no
Relatives interviewed – no	PVP alleges incapacity in – all but social/sexual	
Fee Detail: no detail given		
Comments – rc report filed after conservatorship granted		
attorney spoke with rc worker and special ed transition teacher		

Case # VP014477	Filed on 2-8-12	Order granted on 5-21-12
Order by Judge – Murphy	Attorney – Attorney F	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all 7		
PVP report in lieu of court investigator report – silent on this		
Disabilities of Client – williams syndrome		
Client in School – no	Relatives – father and siblings	
RC report filed – 4-26-13	RC powers recommended – unknown	
Stipulation to no RC report for hearing – unknown		
PVP Total Hours – 4.9	IEP Reviewed – unknown	IPP Reviewed – unknown
RC report reviewed – no	CI report reviewed – no	
Other docs reviewed – unknown because pvp report is not in court file online		
Home Interview – unknown	School Interview – unknown	Doctor Interview – unknown
Relatives interviewed – ?	PVP alleges incapacity in – unknown	
Fee Detail: no detail given		
Comments – rc report filed 11 months after conservatorship granted		

Case # VP014271	Filed on 2-1-12	Order granted on 5-16-12
Order by Judge – Murphy	Attorney – Attorney F	Bet Tzedek Case – yes
Powers Requested – all 7		
Powers Order granted – all 7		
PVP report in lieu of court investigator report – silent on this		
Disabilities of Client – autism, grade 3 level in school (per cap dec)		
Client in School – ?	Relatives – unknown because no pvp report on file	
RC report filed – 12-3-12	RC powers recommended – unknown	
Stipulation to no RC report for hearing – yes		
PVP Total Hours – 3.4	IEP Reviewed – ?	IPP Reviewed – ?
RC report reviewed – no	CI report reviewed – no	
Other docs reviewed – petition, capacity dec, conf screening form		
Home Interview – ?	School Interview – ?	Doctor Interview – ?
Relatives interviewed – ?	PVP alleges incapacity in – all 7	
Fee Detail: no details given		
Comments – rc report filed 7 months after conservatorship granted		

FILED
LOS ANGELES SUPERIOR COURT

MAY 20 2011

JOHN A. CLARKE, CLERK
M. Dewey
BY M. DEWEY, DEPUTY

Superior Court of the State of California

County of Los Angeles

COURT ORDER

) Probate 01-2011
)
) General Order Re: Probate Volunteer
)
) Panel Appointments
)
) [Probate Code sections 1470 and 1471]
)
)
)

There is a current budget crisis that requires the establishment of a court-wide policy to ensure that available resources are allocated in a manner that promotes access to justice for all members of the public, provides a forum for the fair and expeditious resolution of disputes, maximizes the use of available resources, and carries out the direction of the Legislature that courts adopt cost effective plans for the appointment of publicly compensated counsel. [See Cal. Rules of Court, Rule 10.603(a) and Pen. Code sec. 987.2.] Pursuant to the responsibility of the Presiding Judge through California Rule of Court, Rule 10.603(a) to establish court-wide policy in this regard, the authority for establishing this court-wide policy has been delegated to the Supervising Judge of the Probate Division pursuant to California Rule of Court, Rule 10.603(d).

1 The Probate Code requires the appointment of counsel for a proposed
2 conservatee under certain circumstances. [Prob. Code sec. 1471.] In other
3 cases, the court may appoint counsel where the proposed conservatee is not
4 otherwise represented by counsel and the appointment of counsel would be
5 helpful to the resolution of the matter or is necessary to protect the
6 proposed conservatee's interests. (Prob. Code sec. 1470, subd. (a).)

7
8 In Guardianship proceedings, the Probate Code provides that the court
9 may appoint counsel for a proposed ward if the proposed ward is not otherwise
10 represented by counsel and the appointment of counsel would be helpful to the
11 resolution of the matter or is necessary to protect the proposed ward's
12 interests. [Prob. Code sec. 1470, subd. (a).]

13
14 **Effective July 1, 2011:**

15 As a condition of accepting or continuing any Probate Volunteer Panel
16 ("FVP") appointment to represent a proposed conservatee, conservatee,
17 proposed ward, or ward or other individual, counsel must agree to the
18 policies set forth in this order as follows:

19
20 1. The hourly rate for cases in which the court determines that the
21 adult client or his/her estate, or a minor client's parent(s) or the minor's
22 estate has no ability to pay shall not exceed \$125.

23
24 2. The hourly rate for cases in which the court determines that the
25 adult client or his/her estate, or a minor client's parent(s) or the minor's

1 estate has sufficient assets to pay shall not exceed \$250 except in cases
2 involving unusual problems requiring extraordinary expertise.

3
4 3. Except as otherwise authorized by the court, services for PVP counsel
5 related to a petition for appointment of a conservator or guardian (including
6 a temporary appointment), shall not exceed 12 total hours.

7
8 4. Except as otherwise authorized by the court, services for PVP
9 counsel reappointed to represent a conservatee or ward in a matter shall not
10 exceed 10 total hours.

11
12 5. On cases in which the court has determined that the adult client
13 or his/her estate, or a minor client's parent(s) or the minor's estate has no
14 ability to pay his/her counsel and the County of Los Angeles is ordered to
15 pay for such services, PVP counsel shall be compensated through the Court's
16 PACE program.

17
18 a. No further payments shall be made by PACE to any counsel who has
19 received compensation for Probate Code 1470 and 1471 appointments
20 (including reappointments) in an amount of more than \$100,000 for
21 any fiscal year (July 1 to June 30) without the written approval
22 of the Supervising Judge for the Probate Division.

23
24 b. No further payments shall be made by PACE to any counsel who has
25

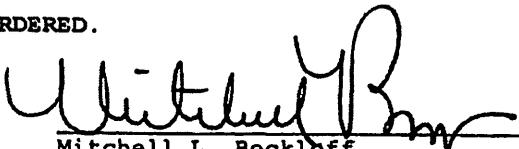
1 received combined compensation for (1) Probate Code 1470 and 1471
2 appointments (including reappointments) and (2) Family Code
3 section 3153, subd. (b) (minor's counsel) in an amount of more
4 than \$150,000 for any fiscal year (July 1 to June 30) without the
5 written approval of the Supervising Judge for the Probate
6 Division.

7
8 c. All PVP counsel are required to certify at the time of
9 appointment that the total compensation billed by counsel, for
10 payment by PACE, (whether or not received) for Probate Code
11 section 1470, 1471, and Family Code section 3153, subd. (b)
12 appointments does not exceed the annual (July 1 to June 30)
13 limits herein.

14
15 d. PVP counsel shall submit all PACE claims within 90 days from the
16 date of the order approving fees. PACE claims submitted more
17 than 90 days after the date of the order approving fees are
18 subject to a fifty percent reduction.

19
20 GOOD CAUSE APPEARING, IT IS SO ORDERED.

21
22 Date: May 20, 2011



Mitchell L. Beckloff
Supervising Judge, Probate

MAY 02 2014

Sherri R. Carter, Executive Officer/Clerk

By Rebecca Gamboa, Deputy
Rebecca Gamboa

Superior Court of the State of California
County of Los Angeles

Court Order

General Order Re: Probate Volunteer
Panel Appointments
[Probate Code sections 1470 and 1471]

A court-wide policy has been established to ensure that available resources are allocated in a manner that promotes access to justice for all members of the public, provides a forum for the fair and expeditious resolution of disputes, maximizes the use of available resources, and carries out the direction of the Legislature that courts adopt cost effective plans for the appointment of publicly compensated counsel. [See Cal. Rules of Court, Rule 10.603(a) and Pen. Code sec. 987.2.] Pursuant to the responsibility of the Presiding Judge through California Rule of Court, Rule 10.603(a) to establish court-wide policy in this regard, the authority for establishing this court-wide policy has been delegated to the Supervising Judge of the Probate Division pursuant to California Rule of Court, Rule 10.603(d).

The Probate Code requires the appointment of counsel for a proposed conservatee under certain circumstances. [Prob. Code sec. 1471.] In other cases, the court may appoint counsel where the proposed conservatee is not otherwise

1 represented by counsel and the appointment of counsel would be helpful to the
2 resolution of the matter or is necessary to protect the proposed conservatee's interests.
3 [Prob. Code sec. 1470, subd. (a).]
4

5 In Guardianship proceedings, the Probate Code provides that the court may
6 appoint counsel for a proposed ward if the proposed ward is not otherwise represented
7 by counsel and the appointment of counsel would be helpful to the resolution of the
8 matter or is necessary to protect the proposed ward's interests. [Prob. Code sec. 1470,
9 subd. (a).]
10

11 Effective July 1, 2011:

12 As a condition of accepting or continuing any Probate Volunteer Panel ("PVP")
13 appointment to represent a proposed conservatee, conservatee, proposed ward, or
14 ward or other individual, counsel must agree to the policies set for the in this order as
15 follows:
16

17 1. The hourly rate for cases in which the court determines that the adult
18 client or his/her estate, or a minor client's parent(s) or the minor's estate has no ability
19 to pay, shall not exceed \$125.
20

21 2. The hourly rate for cases in which the court determines that the adult
22 client or his/her estate, or minor client's parent(s) or the minor's estate has sufficient
23 assets to pay, shall not exceed \$250, except in cases involving unusual problems
24 requiring extraordinary expertise.
25

26 3. Except as otherwise authorized by the court, services for PVP counsel
27 related to a petition for appointment of a conservator or guardian (including a temporary
28 appointment), shall not exceed 12 total hours.

1 4. Except as otherwise authorized by the court, services for PVP counsel
2 reappointed to represent a conservatee or ward in a matter, shall not exceed 10 total
3 hours.

4
5 5. On cases in which the court has determined that the adult client or his/her
6 estate, or a minor client's parent(s) or the minor's estate has no ability to pay his/her
7 counsel and the County of Los Angeles is ordered to pay for such services, PVP
8 counsel shall be compensated through the Court's PACE program.

9
10 a. No further payments shall be made by PACE to any counsel who has
11 received compensation for Probate Code 1470 and 1471 appointments
12 (including reappointments) in an amount of more than \$100,000 for any
13 fiscal year (July 1 to June 30) without the written approval of the
14 Supervising Judge for the Probate Division.

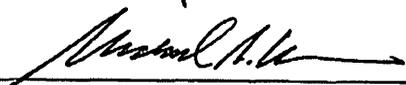
15
16 b. No further payments shall be made by PACE to any counsel who has
17 received combined compensation for (1) Probate Code 1470 and 1471
18 appointments (including reappointments) and (2) Family Code section
19 3153, subd. (b) (minor's counsel) in an amount of more than \$150,000 for
20 any fiscal year (July 1 to June 30) without the written approval of the
21 Supervising Judge for the Probate Division.

22
23 c. All PVP counsel are required to certify at the time of appointment that the
24 total compensation billed by counsel, for payment by PACE, (whether or
25 not received) for Probate Code section 1470, 1471, and Family Code
26 section 3153, subd. (b) appointments, does not exceed the annual (July 1
27 to June 30) limits herein.

- 1 d. PVP counsel shall submit all PACE claims within 90 days from the date of
2 the order approving fees. PACE claims submitted more than 90 days after
3 the date of the order approving fees are subject to a fifty percent
4 reduction.
5 e. It is the responsibility of appointed counsel to fully apprise the Court at
6 every hearing of the status of all fees incurred. Failure to do so may
7 impact the amount of the fee awarded.
8

9 **GOOD CAUSE APPEARING, IT IS SO ORDERED**

10
11 Date: May 2, 2014

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13 
14 _____
15 Michael I. Levanas
16 Supervising Judge, Probate Division
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MAY 12 2015

Sherrill R. Sartor, Executive Officer/Clerk
By:  Deputy
J. PARKHURST

Superior Court of the State of California
County of Los Angeles

Court Order } Probate
General Order Re: Probate Volunteer
Panel Appointments
[Probate Code sections 1470 and 1471]

A court-wide policy has been established to ensure that available resources are allocated in a manner that promotes access to justice for all members of the public, provides a forum for the fair and expeditious resolution of disputes, maximizes the use of available resources, and carries out the direction of the Legislature that courts adopt cost effective plans for the appointment of publicly compensated counsel. [See Cal. Rules of Court, Rule 10.603(a) and Pen. Code sec. 987.2.] Pursuant to the responsibility of the Presiding Judge through California Rule of Court, Rule 10.603(a) to establish court-wide policy in this regard, the authority for establishing this court-wide policy has been delegated to the Supervising Judge of the Probate Division pursuant to California Rule of Court, Rule 10.603(d).

The Probate Code requires the appointment of counsel for a proposed conservatee under certain circumstances. [Prob. Code sec. 1471.] In other cases, the court may appoint counsel where the proposed conservatee is not otherwise represented by counsel and the appointment of counsel would be helpful to the resolution of the matter or is necessary to protect the proposed conservatee's interests. [Prob. Code sec. 1470, subd. (a).]

1 In guardianship proceedings, the Probate Code provides that the court may
2 appoint counsel for a proposed ward if the proposed ward is not otherwise represented
3 by counsel and the appointment of counsel would be helpful to the resolution of the
4 matter or is necessary to protect the proposed ward's interests. [Prob. Code sec. 1470,
5 subd. (a).]

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14 client or his/her estate, or a minor client's parent(s) or the minor's estate has no ability
15 to pay, shall not exceed \$125.

16
17 2. The hourly rate for cases in which the court determines that the adult
18 client or his/her estate, or minor client's parent(s) or the minor's estate has sufficient
19 assets to pay, shall not exceed \$250, except in cases involving unusual problems
20 requiring extraordinary expertise.

21
22 3. Except as otherwise authorized by the court, services for PVP counsel
23 related to a petition for appointment of a conservator or guardian (including a temporary
24 appointment), shall not exceed 12 total hours.

25
26 4. Except as otherwise authorized by the court, services for PVP counsel
27 reappointed to represent a conservatee or ward in a matter, shall not exceed 10 total
28 hours.

1 5. On cases in which the court has determined that the adult client or his/her
2 estate, or a minor client's parent(s) or the minor's estate has no ability to pay his/her
3 counsel and the County of Los Angeles is ordered to pay for such services, PVP
4 counsel shall be compensated through the Court's PACE program.

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8 (including reappointments) in an amount of more than \$100,000 for any
9 fiscal year (July 1 to June 30) without the written approval of the
10 Supervising Judge for the Probate Division.

11
12 b. No further payments shall be made by PACE to any counsel who has
13 received combined compensation for (1) Probate Code 1470 and 1471
14 appointments (including reappointments) and (2) Family Code section
15 3153, subd. (b) (minor's counsel) in an amount of more than \$150,000 for
16 any fiscal year (July 1 to June 30) without the written approval of the
17 Supervising Judge for the Probate Division.

18
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21 not received) for Probate Code section 1470, 1471, and Family Code
22 section 3153, subd. (b) appointments, does not exceed the annual (July 1
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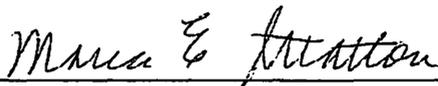
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e. It is the responsibility of appointed counsel to fully apprise the Court at every hearing of the status of all fees incurred. Failure to do so may impact the amount of the fee awarded.

GOOD CAUSE APPEARING, IT IS SO ORDERED

Date: 5.12.15



Maria E. Stratton
Supervising Judge, Probate and Mental Health Departments

///



SHERRI R. CARTER
EXECUTIVE OFFICER / CLERK

PUBLIC ACCESS TO JUDICIAL ADMINISTRATIVE RECORDS
111 NORTH HILL STREET
LOS ANGELES, CA 90012-3014

Superior Court of California County of Los Angeles

July 13, 2015

Mr. Thomas F. Coleman
18427 Vincennes St., #23
Northridge, CA 91325

Dear Mr. Coleman:

The Court is in receipt of your records requests dated June 14, 2015, and received by this office on June 17, 2015. In it, you requested:

Request 1: Records on Presumptive Limit of 12 hours for PVP attorneys

In response to a records request, I was sent three general orders placing a presumptive upper limit of 12 hours for pvp attorneys in conservatorship cases.

I am requesting records of any type (printed, audio, video, electronic, digital, etc) related to these orders.

a) Order by Judge Mitchell Beckloff (May 20, 2011)

i) Any records regarding how the number of hours was decided, including records about any communications with court staff or with the county or with any internal or external agencies or personnel regarding a presumptive limit for pvp fees in conservatorship cases.

ii) Any records showing any communications to or from pvp attorneys concerning this order.

iii) Any research reports or studies done by court personnel or others about the tasks that a pvp attorney should perform in a typical conservatorship case and the number of hours that would be involved in performing such tasks.

a) Order by Judge Michael Levanas (May 02, 2014)

i) Any records regarding how the number of hours was decided, including records about any communications with court staff or with the county or with any internal or external agencies or personnel regarding a presumptive limit for pvp fees in conservatorship cases.

ii) Any records showing any communications to or from pvp attorneys concerning this order.

iii) Any research reports or studies done by court personnel or others about the tasks that a pvp attorney should perform in a typical conservatorship case and the number of hours that would be involved in performing such tasks.

a) Order by Judge Maria Stratton (May 12, 2015)

i) Any records regarding how the number of hours was decided, including records about any communications with court staff or with the county or with any internal or external agencies or personnel regarding a presumptive limit for pvp fees in conservatorship cases.

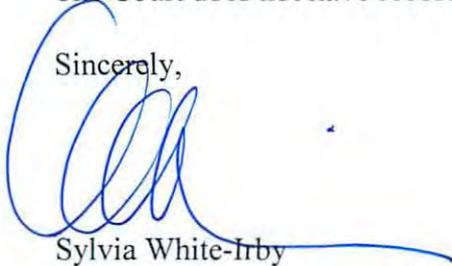
ii) Any records showing any communications to or from pvp attorneys concerning this order.

iii) Any research reports or studies done by court personnel or others about the tasks that a pvp attorney should perform in a typical conservatorship case and the number of hours that would be involved in performing such tasks.

Mr. Thomas F. Coleman
July 13, 2015
Page 2

The Court does not have records responsive to your request.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Sylvia White-Irby', with a long horizontal flourish extending to the right.

Sylvia White-Irby
Administrator, Administrative Records Requests



SHERRI R. CARTER
EXECUTIVE OFFICER / CLERK

PUBLIC ACCESS TO JUDICIAL ADMINISTRATIVE RECORDS
111 NORTH HILL STREET
LOS ANGELES, CA 90012-3014

Superior Court of California County of Los Angeles

November 18, 2014

Mr. Thomas F. Coleman
18427 Vincennes St., #23
Northridge, CA 91325

Dear Mr. Coleman:

The Court is in receipt of your records request dated October 6, 2014, and received by this office on October 8, 2014. In it, you request the following:

Request 1: Decision to Stop Using Court Investigators in Limited conservatorships

Judge Levanas explained at the PVP training on September 13 that prior to 2014 a different presiding judge of the Probate Court made a decision to discontinue using court investigators in initial filings of limited conservatorship cases.

I want to know the name of the judge who made this decision, the date the decision was made, and to whom it was communicated.

(A) I request access to records of any kind – memos, orders, letters, directives, emails – to or from any presiding judge of the Probate Court during 2010 through the present pertaining to the subject of not using court investigators in limited conservatorship cases.

(B) I request access to records of any kind – memos, orders, letters, directives, emails – to or from any employee in the Probate Investigations unit during 2010 through the present pertaining to the subject of not using court investigators in limited conservatorship cases.

Pursuant to California Rules of Court 10.500, no administrative records fall within the scope of your request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sylvia White-Irby".

Sylvia White-Irby
Administrator, Administrative Records Requests

SWI: cc

Class Title: Probate Investigator
Bargaining Unit: Non-Represented
Class Code: 9800

\$2,449.38 - \$3,391.22 Biweekly
Salary: \$5,307.00 - \$7,347.64 Monthly
\$63,684.00 - \$88,171.68 Annually

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[Email me when more jobs like this become available](#)

Position Description	Benefits
General Purpose Under general supervision, conducts investigations of conservatorship and guardianship cases assigned to the Probate Court.	
Distinguishing Characteristics Positions allocated to this class are responsible for investigating conservatorship and guardianship cases assigned to the Probate Court. Incumbents must exercise a thorough knowledge of and ability to analyze and interpret Probate Law and legislation.	
Examples of Essential Duties, Responsibilities, and Skills:	
<p>The following examples are intended to describe the general nature and level of work performed by personnel assigned to this classification. Any one position in this class may not perform all the duties listed below, nor are the duties described intended to be an exhaustive list of all duties, responsibilities and skills required of personnel so classified.</p>	
<ol style="list-style-type: none">1. Interviews prospective conservatees for the Probate Court and advises them of their right to attend, to oppose the proceeding, and to have counsel present. Interviews prospective conservators, family members and collateral sources and makes recommendations to the Court regarding their proposals and statements.2. Reports to the Court on the proposed conservatee's living arrangements and the cost to maintain such arrangements, and offers a professional opinion regarding the conservatee's physical and mental capabilities; makes determinations regarding the status of a person's right to vote and whether he or she is able to give medical consent; reviews criminal background checks on prospective conservators and guardians.3. Interviews prospective guardians and makes recommendations to the Court regarding their suitability. Interviews minors as appropriate,4. Reviews conservatorships on an annual or biennial basis and forwards any requests for change of conservatorship or termination of the conservatorship to the Court; assesses need for conservatorship.5. Completes and submits conservatorship and guardianship investigation court reports to the court where they are taken into evidence and used by the judge in making guardianship and conservatorship determinations.6. Demonstrates knowledge of Adults Protective Services and Department of Children and Family Services reporting guidelines. Reports health and safety concerns as appropriate.	
Other Duties	

1. Participates in regularly scheduled training sessions provided by the Court and/or attends training sessions held at yearly conferences.
2. At request of the Court, testifies on guardianship and conservatorship cases.
3. Performs other duties as assigned.

Knowledge of:

1. Effective interview methods and techniques to assess the needs of dependent adults and children.
2. Navigational tools to aid in travel from one location to another in a timely manner.
3. Social programs used as resources including Regional Centers, Social Security, Medicare, Medi-Cal, Supplemental Security Income and Veteran's Administration.
4. Applicable Probate Code.
5. Basic medical and mental health terminology.
6. Social issues such as child abuse, domestic violence, drug abuse, and elder abuse.

Ability to:

1. Work independently. Consults with supervisor regarding cases as appropriate.
2. Use good judgment in making decisions.
3. Use organizational and time management skills to aid in the completion of work assignments in a timely manner.
4. Ability to document interviews, collateral contacts and maintain files. Write comprehensive, accurate and concise reports that meet evidentiary standards using word processing software.
5. Travel throughout Los Angeles County arriving promptly at various locations with the aid of navigational tools to conduct investigative interviews.
6. Understand diversity and cultural differences.
7. Read medical charts.
8. Communicate effectively orally and in writing, knowledge of proper English grammar and usage.
9. Maintain confidentiality of Court documents and records.
10. Establish and maintain effective working relationships with administrators, supervisors and co-workers, members of the public and others encountered in the course of work.

Qualifications:
Minimum Requirements Graduation from an accredited four year college or university with a degree in social science, psychology, or closely related field -AND- Three years of experience performing field investigations as a probation or parole officer, law enforcement officer, or social worker.
Licenses; Certificates; Special Requirements A valid California Class C driver's license or the ability to utilize an alternative method of transportation when needed to carry out job-related essential functions. Must be a United States citizen.
Physical Class:
(2) Physical Class II - Light Work This class includes administrative and clerical positions requiring light physical effort, which may include occasional light lifting to a 10 pound limit, and some bending, stooping, or squatting. Considerable ambulation may be involved.

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 policies 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.

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

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.](#)



Views of a PVP Attorney on the Training Program in Los Angeles

“In reviewing the website [of the Disability and Guardianship Project] last night I realized how scanty my education was concerning the LAWS that protect our clients that I should be using as the basis for advocacy. An eye opener. There was absolutely no training on those laws in any of the PVP stuff that I have attended so far. And I’ve been part of the program in LA since I think 2008 That’s a lot of years to get basically updates on conservatorship case law that I can get elsewhere and rehashing of how to write a report. In reality, I have gotten more from the minor’s counsel training that I attend every year in terms of at least learning some sensitivity to cultural issues of which disability could be considered a ‘culture’.

“Don’t know what other counties do (ie. what training they give their PD’s), but since LA is so heavily dependent on private attorneys in this area, it seems that the need is definitely there. And frankly, there have been times when I have been handling the conservatorship for the petitioner where I look at what the PVP’s have done and I’m going – is that all there is?? Or what was this person doing that wasn’t rote?”

– PVP Attorney

April 14, 2015

ADA Case Study

Example of ADA Violations in a Limited Conservatorship Case

A petition for limited conservatorship was filed on August 22, 2012. The court appointed an attorney to represent the proposed conservatee on September 14, 2012. The petition was granted on April 14, 2014. The following actions of the court-appointed attorney violated the Americans with Disabilities Act by denying someone with a developmental disability access to justice and depriving him of meaningful participation in the case.

1. **No ADA Plan.** The attorney failed to develop an ADA plan for the client to determine the best way to have meaningful communications with the client and maximize his participation in the case.

2. **No IPP Review.** The attorney failed to request an Individual Program Plan (IPP) Review with the regional center and to have a professional appointed to determine the capacities of the client in the seven decision-making areas in question. An IPP review also would have examined if there were lesser restrictive alternatives in any of those seven areas.

3. **Home Visit.** When the attorney visited the home of his client, the attorney directed his entire conversation with the mother of his client, even though the client was present and even though a communication facilitator was present and available to assist the client in communicating with the attorney. When the attorney left the home, the client asked his mother if the attorney thought he was deaf since he never attempted to speak directly with him.

4. **School Visit.** When the attorney visited his client at the client's school, the attorney refused to allow the client to use assisted communication technology (facilitated communication). Instead, the attorney used yes/no flash cards and told the client to answer his questions by pointing to one of the cards. Even though the flash card system was failing to produce consistent answers, the attorney refused to change to the client's preferred method of communication.

5. **Voting Rights.** When the mother asked the attorney if her son could retain the right to vote, since he had indicated a desire to vote, the attorney replied that the retention of voting rights would be inconsistent with the purpose of a conservatorship. The attorney later informed the court that his client was unable to complete an affidavit of voter registration even though the attorney never attempted to have his client fill out such an application, with or without assistance. The attorney was unfamiliar with federal voting rights laws, including ADA accommodation requirements.

6. **Violation of Confidentiality.** The client signed MC-410, an ADA accommodation request form asking that he be allowed to use facilitated communication in his case, both in and out of court. When the attorney received this form from the client, sent to the attorney by Thomas F. Coleman who the client had asked to help him as a support person, the attorney did not forward the form to the court as required by law. Instead, the attorney sent the form to the attorneys for the other parties. Form MC-410 is a confidential form that is intended as a communication between court personnel and the person making the ADA request.

7. **Disloyalty to Client.** The attorney filed a report with the court recommending that decision-making authority be taken away from the client in all seven areas in question, including the right to make social decisions. The attorney knew that the client wanted to retain the right to make social decisions. He also knew that the regional center has recommended that the client retain authority over social decisions. Ultimately, when confronted with evidence of his client's capacity to make such decisions, the attorney changed his mind. However, the attorney still recommended that his client be required to have regular "Skype" visits with his father, despite knowing that his client feared his father, did not want to communicate with him, and his therapist recommended against mandatory communications.

Access to Justice Denied: Another Example of ADA Violations by a Court-Appointed Attorney

by Thomas F. Coleman

The following is an excerpt from an email I received from a court-appointed attorney in Los Angeles who read about the class action complaint to the Department of Justice.

He provided an example of how the previous court-appointed attorney in the case failed to provide the client access to justice.

Here is what he said in an email sent to me on July 6, 2015:

“I subbed in on a limited conservatorship over a young woman. In the numerous hearings over the past two years, she never came to court - PVP waived her appearance on all the hearings and the 3 Cap Decls [capacity declarations] filed by the same psychologist in this period of time stated that she was medically unable to attend even though she was able and willing and had her own car and valid driver's license. To make it worse, Regional Center found that she was not developmentally disabled - They had her evaluated and tested by a PhD who confirmed this conclusion as well. Yet the appointment happened. Now I am fighting to terminate the limited. I have read various works of yours over the past year. I find you to have exceptional insights on such matters and to be a good resource on the issues I must address.”