

Legal Principles Governing Attempts to Restrict the Social Rights of Conservatees

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

1. State Action

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

2. Fourteenth Amendment

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

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

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

3. First Amendment

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

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

4. Statutory Presumptions

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

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

5. Burden of Proof

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

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

6. Other Requirements

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

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