Limited Conservatorships: A System that Protects Adults with Developmental Disabilities Needs *Major* Reform

Pre-Conference Report

by Thomas F. Coleman

Most people who hear the term "limited conservatorship" for the first time probably react the same way I did when I first heard it. "What the heck is that?"

I had heard about conservatorships in the context of older people with dementia or people with brain injuries who can't handle their own financial affairs. But my personal experience with the concept of conservatorships was limited to signing a "nomination of conservator" form as a part of my estate planning package a few years ago (in case my capacity to make major life decisions would be adversely affected due to an illness or an accident).

Other than that, I vaguely knew that a conservatorship system was operated by the Probate Court for adults who needed a formal method to provide them with financial or personal protection against potential fraud or abuse. I knew there were two types of conservatorships: of the person; and of the estate.

What I did not know was that the conservatorship system has changed over the years, as our commitment to constitutional rights was strengthened and as a disability rights movement emerged.

We now have three conservatorship systems: (1) General Conservatorships (mostly for the elderly); (2) Lanterman Petris Short (LPS) Conservatorships (for adults with mental illness); and (3) Limited Conservatorships (for adults with developmental disabilities). This essay focuses on Limited Conservatorships for adults with developmental disabilities – documenting the current condition of this system and the need for major reform.

The essay suggests points to specific problems that need to be addressed. The essay is written as a precursor to a series of conferences – roundtable in format where interested participants will discuss a wide range of policies and practices needing reform.

After receiving the best ideas of the participants during these conferences, a Conference Report will be written and distributed to relevant governmental agencies, nonprofit organizations, and leaders in the world of developmental disabilities. At that point, those who advocate for people with developmental disabilities will have ownership of the problem and can press for legislative and judicial reform of the Limited Conservatorship System in California.

What happens in California, in terms of reforms, can serve as a model for the rest of the nation. Right now, however, I would not want the current California system to be replicated elsewhere. The Limited Conservatorship System here is better than no protection system at all, but the problems with it are so numerous, so complex, and so disturbing that it is not something that the judiciary or the legal community would want to serve as a model for other states.

When I say "Limited Conservatorship System" I am referring to a set of laws and network of participants who decide whether an adult with a developmental disability will have rights to make major life decisions taken away or restricted. These are decisions that we all take for granted as the basic human right of any adult: the choice of one's residence; whether to marry; registering to vote; signing contracts; who to socialize with (or not); sexual intimacy, etc.

The network of participants includes: the legislature (passing laws); the judiciary (operating the system); regional centers (assessing clients); and attorneys appointed for conservatees. Noticeably absent are:

executive branch agencies, such as the Department of Justice, the Department of Developmental Services, and the State Council on Developmental Disabilities.

The Role of Our Project

Before analyzing the Limited Conservatorship System and seeking solutions to the myriad problems with it, it is only fair that I share with the reader our credentials and motivations. By "our" I refer to the Disability and Abuse Project.

The Disability and Abuse Project is operated by Spectrum Institute, a nonprofit organization that engages in education and advocacy to protect personal rights. Issue areas on which Spectrum Institute has focused its attention over the years include: discrimination on the basis of marital status, sex, and sexual orientation; hate crimes; personal privacy; family diversity; institutional abuse of teenagers; and the rights of people with disabilities.

Spectrum Institute has a limited budget which comes from a few small donations by private individuals. We have no government or foundation grants.

The Disability and Abuse Project is an outgrowth of the decades long work of Dr. Nora J. Baladerian. Nora is a clinical psychologist who is heavily involved in the world of developmental disabilities: as a therapist for individuals; as a forensic expert for lawyers in civil and criminal cases; and as an educator and trainer for government agencies and nonprofit organizations that provide services for children and adults with such disabilities.

My background is in law and public policy. As an attorney and advocate, I have been involved in court cases, political advocacy, and special projects for several decades. Many of these projects have involved advocacy for people with disabilities.

Several years ago, I decided to focus my professional energy on the rights of people with developmental disabilities. Nora and I created the Disability and Abuse Project to prioritize the problem with the greatest need and the least attention: the physical, sexual, and emotional abuse of children and adults with intellectual and developmental disabilities. Jim Stream, Executive Director of The Arc of Riverside joined the Executive Committee of the Project.

Two years ago, our attention was drawn to a case that involved the alleged abuse of a conservatee with a developmental disability. Unfortunately, he died before we were able to discover that the system that was supposed to protect him from abuse or neglect – the Limited Conservatorship System – had structural and operational flaws that could adversely affect tens of thousands of others like him. So we closed the case – so we thought – and moved on.

Then another case came to our attention – one involving a limited conservatee who was being pressured to visit with a parent he did not want to see. As we focused on this case, we began to learn how "the system" could be used by a parent to violate the constitutional and personal rights of adults with developmental disabilities.

As we were beginning to study how the Limited Conservatorship System operates, yet another case came our way. This one also involved a violation of the social decision-making rights of a conservatee.

With our attention drawn to three cases involving major violations of constitutional rights, and with our preliminary investigation showing structural and operational flaws – these were not isolated problems – we got the message. The Universe was calling on us to lead the charge for reform.

Why us? Because the people operating the Limited Conservatorship System – judges and court staff – were too busy juggling huge caseloads and struggling with fiscal cutbacks to notice that the system was dysfunctional. Attorneys paid by the courts to represent conservatees were following instructions and were not aware of systemic defects.

When the system was established by the legislature, there was no role for agencies of the Executive Branch in advocacy or oversight. We soon learned

that other disability rights organizations were overloaded with work on other issues and that protecting the rights of limited conservatees was not on their agendas.

So "mission impossible" has knocked on our door.

The Limited Conservatorship System

There are three ways to look at the operation of the Limited Conservatorship System: (1) How it should operate under current law; (2) How it actually operates and how this deviates from current law; and (3) How the law should be changed to make the system operate better.

Before discussing how the Limited Conservatorship System currently operates in real life, and before discussing the details of the three cases that came to our attention, let's look at how the law currently specifies it should operate.

When people with developmental disabilities are under the age of 18, their parents have the legal right to make decisions for them. But the day they turn 18, their parents lose such authority. The law presumes that any adult has the capacity and the right to make major life decisions and people with developmental disabilities are no exception.

Therefore, if a person with a developmental disability in fact lacks the capacity to make decisions about finances, education, sex, marriage, etc., someone (usually a parent) needs to petition the Probate Court to establish a conservatorship for the person in order to protect them from potential abuse.

Many, if not most, minors with developmental disabilities are clients of a Regional Center. A Regional Center is a nonprofit organization, funded by the state, which coordinates services for children and adults with developmental disabilities. Regional Centers operate under a contract with the State Department of Developmental Services.

When a Regional Center client is about to turn 18, parents are made aware of the need to petition the Probate Court for a limited conservatorship for their child when he or she turns 18. Most parents are intimidated by the thought of having to go to court.

Some parents look for an attorney to help them with what they perceive as a daunting legal task. Getting referred to an affordable and competent attorney does not happen easily. But some parents – mostly upper middle income ones – manage to find an attorney.

Low income, and most middle income parents, simply do not have discretionary funds to spend on an attorney. These parents muddle through the court process without legal representation.

About 1,200 limited conservatorship petitions are filed each year with the Los Angeles Superior Court. Some 90 percent of these cases are filed by parents without an attorney. They are called "pro per" cases.

Fortunately, Bet Tzedek Legal Services – a nonprofit public service organization – provides a "self help" conservatorship clinic for people seeking to file petitions for general conservatorships (mostly for seniors) and people who need to file petitions for limited conservatorships (for adults with developmental disabilities). This service is provided without charge.

How the System is Supposed to Operate

A parent or family member files a petition for Limited Conservatorship with the Probate Court. A copy of the petition is given to the proposed conservatee (adult with the disability) and to close relatives.

The court is supposed to appoint a court investigator (employee of the court) to investigate the case. The investigator is supposed to visit the home of the proposed conservatee, interview the conservatee in person, review medical and psychological records, and determine the level of the disability and the extent to which the conservatee can or cannot make major life decisions. The investigator should file a confidential report with the court and serve a copy

on the parties to the case. Any interested party, such as another family member, can object to the need for the conservatorship or to the assessment of the level of the proposed conservatee's incapacity.

The court is supposed to notify the relevant Regional Center that their client is the subject of a limited conservatorship proceeding. The law gives the Regional Center an obligation to assess the capacities of the client to make major life decisions and to report their findings (confidentially) to the court. A copy of the Regional Center report must be sent to the parties to the case.

The court is also supposed to appoint a private attorney to represent the proposed conservatee. Since limited conservatorships take away fundamental rights, and may restrict basic personal liberties, proposed conservatees are constitutionally entitled to a court-appointed attorney if they cannot afford to hire one. Because most of them come from low income families, nearly all proposed conservatees need a court-appointed attorney.

State law says that a judge must appoint an attorney to represent a proposed limited conservatee when a case is initially filed.

These attorneys are called PVP attorneys (Probate Volunteer Panel) even though they are not really volunteers serving without compensation. They are paid by county funds in an amount determined by the judge who appointed them.

The loyalty of PVP attorneys should be to their clients – the proposed conservatees for whom they advocate. However, court rules appear to give them a secondary role – to help the judge resolve the case. Therefore, in cases where there may be a dispute about various aspects of the case, the PVP attorney is expected to act as an unofficial court investigator or as an unofficial mediator.

Once the reports of the investigator, the PVP attorney, and the Regional Center are filed with the court and served on the parties, the case is ready for resolution – unless someone has filed an objection and insists on a hearing. A review of court records suggests that objections are filed in only 2 percent of limited conservatorship cases.

The person asking to be conservator should file paperwork with the court acknowledging their duties as conservator and the rights of the conservatee.

Once all the paperwork has been filed, the proposed conservator and conservatee appear before the judge. The judge may speak with the conservatee to make sure they understand what is happening. The judge then enters an order granting the petition.

In the rare cases where a trial is held following an objection by a party to the case, a judgment is entered once the judge decides the contested issues. A party to the case who is displeased with the judgment may file a notice of appeal.

Our research reveals that contested hearings are rare and appeals are almost nonexistent in connection with initial petitions for limited conservatorships.

One year later, the court investigator is supposed to visit the conservatee to check on his or her welfare. An annual review report is supposed to be filed with the court. This is a confidential document. The law requires the court investigator to conduct subsequent reviews every two years and to file a confidential biennial report with the court.

The limited conservatorship case remains open until the conservatee dies. Assuming a normal life span, the case could remain "open" for 50 years or longer.

Although we asked the Probate Court how many limited conservatorship cases are currently open, the court would not give us this information. But based on calculations from other methods of analysis, we estimate that at least 30,000 limited conservatorship cases are currently open in Los Angeles County and about 100,000 limited conservatorship cases are open statewide. The figures could be a high as 50,000 in Los Angeles and 150,000 statewide.

In any open case, a conservator or conservatee can

file a supplemental petition with the court at any time. Although people do not know this, anyone can send a letter to the judge complaining that the conservatee is being mistreated. If a supplemental petition or a complaint is filed, the court can order another investigation or it can appoint a PVP attorney to represent the conservatee. A hearing can be held and an appeal can be filed. Again, this is rare.

Drumroll . . . How the System Really Works

In the General Conservatorship System, the subject of the proceeding is generally an elderly person – someone in their 80s or even 90s. They have lived most of their life and need protection for their remaining years. Usually, it is an all or nothing situation with the conservator receiving authority to make all major life decisions or not getting any authority at all.

Major reforms occurred in the General Conservatorship System in the late 1970s. The position of court investigator was created in 1977 – a product of the "rights revolution." It was the same year that courts received authority to appoint an attorney to represent the proposed conservatee.

Part of the thorough revamping of the General Conservatorship System in the late 1970s was the creation of the Limited Conservatorship System for adults with developmental disabilities. With education and pressure from disability rights groups, legislators decided that the law should encourage adults with developmental disabilities to be as independent as possible. Therefore, this new system presumed that limited conservatees would keep as many decision-making rights as possible. Restrictions on any specific right would be on an as needed basis. Hence, the emergence of a Limited Conservatorship System in California.

From merely reading the statute books, it could be said that the Limited Conservatorship System looks good on paper. It should be noted that the same thing was once said about the General Conservatorship System. (Friedman and Star, "Losing It in California: Conservatorship and the Social Organization of Aging," 73 *Washington University Law Review* 1501, 1512 (1995).)

"It is one thing to be progressive on paper, quite another to make sure reality matches the words. After all, rights can be ignored; they can be waived; and sometimes they can turn into a caricature of themselves." (Friedman and Star, supra.)

In order to move beyond the surface appeal of the words of the statutes governing a system such as this, we looked at the court files in dozens of limited conservatorship cases. (See: "Searching for Clues: Putting Together Pieces of the Limited Conservatorship Puzzle by Examining Court Records.")

Although the examination of court dockets and case files is not definitive, "one gets a lot closer [to the truth] by looking into files than by just reading statutes, their legislative history, and the handful of decided [appellate] cases." (Friedman and Star, supra.)

One gets even closer to the truth by interviewing parties to actual cases and by witnessing the performance of various participants in the system. In retrospect, we now know that we were fortunate to have three specific cases come to our attention for more intense scrutiny in real time.

Through these three cases, we were able to observe and analyze the performance of judges, court investigators, PVP attorneys, and Regional Centers. This gave us a better glimpse of how the system operates in reality. Spoiler Alert! Reality does not match theory.

Before sharing the specifics of the three cases, I would like to explain our extensive efforts to analyze the Limited Conservatorship System.

I read the relevant statutes; examined appellate cases on the relevant constitutional rights of conservatees; read appellate cases on the right of conservatees to effective assistance of counsel; and reviewed professional ethics on the role of attorneys representing clients with diminished capacity.

I read the court dockets for dozens of limited conservatorship cases; met with the Presiding Judge of the Probate Court; sat in on a court proceeding; interviewed the attorney with the Los Angeles County Bar Association who coordinates the trainings of PVP attorneys; attended an actual training; and heard a lecture by the Bet Tzedek attorney who runs the Self-Help Clinic. I also communicated with public guardians and experts in adult protective services.

The Three Cases

During the last two years, three cases were brought to the attention of Dr. Nora J. Baladerian. She, in turn, enlisted my help with these cases.

Each of the three cases gave us a glimpse into the performance of the major participants in the Limited Conservatorship System: Self Help Clinic, Probate Investigators, PVP attorneys, and Judges. We also were able to share the anguish of family members who were trying to help the conservatees.

Our experience with these three cases is what prompted us to research the law that states how the system should operate, and look into court files and records in other cases to find any patterns regarding the performance of the key participants.

The Case of Nicky P.

On June 25, 2012, Nora received an email from the sister-in-law of Nicky P, a man in his mid-30s who had a serious intellectual disability. Nicky was a limited conservatee who lived with his parents. The parents were his conservators.

Nora sent me the email and asked if I would take the lead because it involved legal issues. Here is what the email said (names changed by me):

"My husband's parents have been neglecting [my husband's brother]. Nicky is being put in the back yard naked and in handcuffs. We witnessed him in his room naked and in handcuffs. Once we noticed that he was in his room without food and water for two days handcuffed. He had underwear on but he had urinated and pooped on himself. My husband snapped some pictures of the abuse when it was taking place but nobody seems to care. We have proved that this is really happening. We called to make a report twice and both times they just question the parents and of course they denied it. A lady by the name Mrs. Reed called us from Elderly and Handicap Protective Services and basically was very rude to us saying that there is no abuse going on and it's our word against theirs. We told her that we have pictures to prove it. We feel that if Nicky does not get removed from the home he might end up dying of starvation. He looks very skinny and frail. Please contact me it's urgent. Sheriff's Dept. also don't seem to care."

The photos were sent to Nora the next day. When I saw them, my heart sank. They showed Nicky on the ground with handcuffs on his ankles. His body was covered with bruises and abrasions.

I dropped everything I was doing and worked for a few days to prepare a packet of information to send to Adult Protective Services.

Since APS had been previously contacted by Nicky's brother, without success, Nora and I were not optimistic about what their response to us would be. So I decided to bring the Justice Deputy of a County Supervisor into the loop.

APS and the Justice Deputy were sent the packet of information about the alleged abuse, including photos, by email on Monday morning, July 1, 2012. They were told that if an investigation and appropriate action were not taken by that afternoon, we would take the matter to the media on Tuesday.

We later learned that APS and the Sheriff went to the home of the parents on Monday. They went inside the house to check on Nicky's condition. They found him lying on the floor in a fetal position, feebly crying "help" as he looked up at them. He appeared to be very frail.

Nicky was taken to the hospital were he was admit-

ted for evaluation and treatment. Nora was told by a nurse that Nicky, who was severely underweight, had a MRSA infection. Nora was told by APS that the parents had withdrawn Nicky as a Regional Center client, so he had been without a social worker or services for a long time.

The brother called the hospital and they would not confirm that Nicky was a patient. So I told him to just show up and ask to see his brother. The hospital staff would not let him see Nicky. They had been told by APS not to allow any visitors.

I could only imagine the fear of a man with a severe intellectual disability in a hospital bed surrounded by strangers. He needed to see the face of a loved one.

Nora contacted a head nurse and pleaded with her to allow the brother to see Nicky. What we did not know at the time but found out much later was that Nicky's conservatorship court order allowed him to retain his right to visit with anyone of his choice. Thus, the "no visitor" rule imposed by the hospital was a violation of patent's rights.

The nurse had a heart, and despite APS instructions, allowed the brother and his wife to see Nicky once, and only once. We were told that when Nicky saw his brother, his face lit up, he smiled, and they held hands. After a brief conversation with Nicky, they were told to leave. They never saw Nicky again.

APS did not find an alternative placement for Nicky. They did not interview the brother and his wife as a possible placement, despite the fact that they had a spare bedroom ready for Nicky upon his release from the hospital. After about 10 days, when Nicky was stabilized enough to be discharged, the hospital called the parents and told them to come pick up Nicky. He was taken home.

We later learned that APS had contacted the Probate Court about this incident, since Nicky was a limited conservatee and the alleged abuse or neglect was claimed to be caused by the parent-conservators.

A review of court records showed that, after the APS report, the court appointed an attorney to represent Nicky in the conservatorship proceeding. The attorney conducted an "investigation."

During the so-called investigation, the attorney did not interview the sheriff investigator who had seen the photos showing the marks on Nicky's body and the handcuffs on his ankles, had seen his frail condition on the floor of his bedroom, and who had interviewed the brother and sister-in-law. The attorney did not interview the brother and his wife. The attorney did not attempt to interview Nicky outside of the presence of the alleged abusers.

The attorney had only spoken with APS and interviewed the parents and then summarily concluded that all was well. So no action was taken by the judge and Nicky remained home with his parents.

Two months later, Nora and I received an email from Nicky's brother, advising us that Nicky was dead. We were told that he died at home and that the parents wanted to have a quick cremation.

We knew that an autopsy should be done. So we advised the brother to contact the coroner to demand one. After learning some of the facts of the case, the coroner seized Nicky's body and did an autopsy.

In addition to the results of the medical examination of the body – which showed old bruise marks and abrasions – the coroner's report also contained some information from the sheriff's investigation.

At the time of death, Nicky, who was 5' 6", weighed only 93 pounds. He had been suffering from pneumonia and dehydration. He had experienced renal failure due to excessive toxins from a medication.

The sheriff investigator reported that Nicky had not seen his doctor in six months. The mother had told the investigator in July that Nicky never left the house because he was too frail to walk. The parents had never obtained a wheelchair for him. Had Nicky not been removed as a client of the Regional Center, a wheelchair would have been easy to obtain and a physical therapist would have helped him regain the

strength to walk.

The sheriff investigator said he had interviewed neighbors, who told him that they would sometimes hear Nicky screaming for help from inside his home.

When the mother was confronted by the sheriff about the handcuffs, she admitted using them on Nicky, but claimed she had a doctor's prescription. No one ever interviewed the doctor about the handcuffs, or why he had not seen Nicky in months.

The coroner's office said the manner of death was "undetermined" because they could not tell whether the care at home had a role in the death. A county death-review-team investigation has not been done.

A recent review of the probate records in Nicky's case revealed another defect in the limited conservatorship system – the failure of court investigators to conduct biennial reviews as required by law.

Records show that a biennial was not done for years on end in Nicky's case. There was one stretch of time when a follow up investigation was not done for 8 years. Another time, no investigation was done for 4 years. The reason for these lapses is unknown.

The Case of Roy L.

Roy L. is 19 years old. He has autism and is mostly nonverbal. His I.Q. of 90 puts him in the normal range.

Roy attends school on weekdays. He formerly used a communication board to spell out words as a method of communication. Now he often uses an iPad that speaks out words and sentences.

Roy's parents have been divorced for several years. Roy has lived with his mother since the divorce. His father lives out of state.

When Roy was about to turn 18, his mother was advised by the Regional Center that she should file a petition for a limited conservatorship. Without a conservatorship order, she would not have authority to make medical, financial, or educational decisions for her son after he officially became an adult.

The mother felt she could not afford an attorney, so she went to a Self Help Conservatorship Clinic operated by Bet Tzedek Legal Services. At the clinic she filled out the conservatorship forms, checking off the boxes as instructed.

She, like the others in the clinic, checked a box declaring that the proposed conservatee "is not able to complete an affidavit for voter registration." She, like the others asked that all "seven powers" be granted to her. She did not understand the implications of either statement or how they would affect the rights of her son.

When the petition was filed, it was opposed by Roy's father. He filed a counter petition, asking that he be made conservator. Nora and I were later informed by the mother that this was a strategic maneuver by the father, who really only wanted unmonitored visitation with Roy on a regular basis.

The problem was that Roy was afraid of his father and did not want to see him. Even the thought of seeing his father caused him great trauma.

Even though the mother did not want to risk having the father become conservator and taking Roy away from her, she could not agree to unsupervised and regular visitation. She knew the emotional turmoil that would cause her son, and her too, since she had to deal with the aftermath of such visits.

The court appointed a PVP attorney to represent Roy in the limited conservatorship proceeding. The attorney went to the home, where he was supposed to interview both Roy and his mother.

One of the issues the mother discussed with the attorney was that of voting. She asked if Roy would keep the right to vote despite the conservatorship. The attorney replied in the negative, telling her that voting would be inconsistent with the whole concept of conservatorship.

After the home visit by the attorney, Roy told his mother that he thought the attorney "must think that I am deaf." When the mother asked why, Roy said that the attorney had not spoken to him directly during the visit.

When the attorney filed a report with the court, he recommended that all "seven powers" be granted to the mother, including the right to make social decisions. He also stated that Roy was unable to complete an affidavit of voter registration.

How the attorney determined the voting matter is unknown. He certainly knew that, if his determination was accepted by the court, Roy would lose his right to vote.

The mother talked to Nora, who discussed the conservatorship proceeding with Roy. She determined that Roy was traumatized by the idea of having to visit with his father. Nora asked Roy and his mother if she could share information about the case with me. They both agreed.

When I spoke with the mother, I learned that Roy had stated that in the next presidential election, he wanted to vote for Hillary.

The mother asked me about voting rights of conservatees. I told her that I would look into it, but that I could see no reason why Roy should not have the right to vote.

The mother told me that she was concerned because the PVP attorney did not want to allow Roy to use his facilitated communication technique and device in communications with the attorney or the court. I told her that I felt that Roy was entitled to use that method, in and out of court, as a reasonable accommodation under the Americans with Disabilities Act.

I contacted an ADA accommodations specialist and learned that the court has a special form that can be used for ADA accommodation requests. I filled out a form for Roy and sent it to the attorney. I told him that he should file it with the court and that he and the court should accommodate Roy's special communication needs.

Instead of submitting the form to the court, the attorney sent a copy to the attorney for the father. ADA accommodation requests are supposed to be confidential (between the court and the requesting party) and not be disclosed to others.

I learned that the attorney planned to speak to Roy at his school. Knowing the attorney's past performance, and resistance to ADA accommodations, I got permission from Roy and his mother for me to be at the school meeting as a support person for Roy.

At the meeting, the attorney again refused to allow Roy to use facilitated communication or his iPad. The attorney had two flash cards – one said YES and the other said NO.

The attorney asked Roy questions, and insisted that Roy answer by pointing to one of the flash cards. I later learned that people with developmental disabilities do not respond well to yes or no questions. Such answers under this type of duress are not reliable. Open ended questions should be used to allow them to develop their own method of answering. The interview process was a disaster. The attorney received a series of inconsistent answers.

With permission of the mother and Roy, Nora invited the attorney to come to her office to meet with Roy, the mother, and me.

At that meeting, the attorney finally allowed Roy to use facilitated communication and his iPad. He learned that Roy wanted to keep his right to make social decisions. He did not want to visit with his father. Roy said he is afraid of his father.

During the meeting, the attorney used complex and legalistic language – quite inappropriate with a person with developmental disabilities.

After I had done further research about voting and the rights of people with disabilities, I advised the PVP attorney that someone can help a person such as Roy fill out the voter registration form. All they

have to do is indicate their desire to vote and sign the completed form.

I also sent the attorney communications about the constitutional rights of conservatees to make their own social decisions and the duty of an attorney to advocate for the wishes of a client, regardless of his personal views about the best interests of the client.

Despite my best efforts, however, the attorney refused to submit the ADA-accommodation request form with the court.

As a result of the meeting at Nora's office, and my communications with the attorney about his client's First Amendment rights, and his client's right to have effective assistance of counsel, it was apparent that some progress had been made.

The attorney filed another report with the court, indicating that Roy was capable of completing the voter registration affidavit. He also recommended that Roy should retain the right to make his own social decisions.

We were very hopeful that the case would be resolved without further drama or trauma. It did not turn out that way.

As a proposed conservatee, Roy retained his right to make social decisions. It was his future role as an actual conservatee that was at issue.

With his full social rights intact, Roy did not want to see his father. Despite this, when the next court hearing was scheduled to occur, Roy's attorney wanted him to come to court so he could visit with his father at the courthouse.

The mother asked Nora and me about this. Didn't Roy have the right to decline a visit with his father at this stage of the proceeding. My answer was an emphatic "yes."

Since the hearing was not a contested proceeding with testimony – it was just a status conference – I told the mother that Roy could decline to come to court that day. He did not have to be there. It was just a time for the attorneys to talk about the case. At this stage, the mother had retained an attorney because the father was getting so demanding.

When Roy did not come to court, his attorney and the attorneys for the mother and father had a fit. They all anticipated that Roy would passively follow instructions to visit with his father at the courthouse.

So the mother was pressured by everyone to make Roy come to court. A special aide had to drive him to court where, over his emotional resistance, he was forced to have a visit with his father. So much for people respecting his right to make his own social decisions – especially at a stage of the proceedings where he still retained all of his rights.

After the unwanted visit was over and the parties appeared again before the judge, Roy's attorney suggested to the court that perhaps Roy and his father could have weekly visits by Skype. This suggestion was made despite the fact that the attorney knew that visits with the father were traumatic for Roy and that Roy did not want to see his father.

To appease the father, the mother's attorney went along with this suggestion. The first Skype visit did not go well. Roy was very upset afterwards and there were emotional outbursts by Roy that the mother had to deal with. During the second Skype visit, Roy figured out to hit a button to stop the Skype session.

The case is still pending at this time. Now that he knows how to end a Skype session, presumably this may happen with some frequency.

Update: Although a final order has not yet been entered, it appears that, due to the intervention of our Project, Roy will retain his right to make social decisions and parental pressure will be prohibited.

On another matter, in reviewing the court files in Roy's case, I noticed that a court investigator's report had not been filed in the case. After reviewing the reporter's transcript of a prior court session,

I learned that the parties had stipulated that the PVP attorney's report would be used as a substitute for the Probate Investigator's report. It just so happens that payment for the an investigation by a court investigator comes out of the court's own budget, whereas payment for a PVP attorney investigation comes out of the general fund of the county.

This type of a stipulation is not uncommon. A review of court records in other cases shows that, upon recommendation from the Probate Attorney, court investigator reports are being waived on a regular basis.

The Case of Craig B.

Craig B. is 26 years old. Although he has autism, he is high functioning, has a part-time job, lives in an apartment with a roommate (with a live-in caregiver too), does volunteer activities, and has a social life.

Craig's parents have been divorced for many years. There has been an ongoing battle in court over whether Craig should have to visit with his father.

Because Craig has resisted visitations with his father, the father sought a court order for a mandated visitation schedule. The father wanted the order to specify that Craig could decide what to do on one weekend, the mother on the second weekend, and the father on the third weekend. Then the rotation would begin again.

The mother said that she did not need a court order. She felt that Craig should be allowed to decide when he wanted to visit either of the parents. Let Craig make these social decisions.

The father did not want Craig to decide because, based on past performance, Craig would probably decide not to visit with his father most of the time.

Craig told the court investigator that he was fearful of his father. He also told his own court-appointed attorney that he did not want to visit with his father. Despite his wishes, and at the insistence of the father, the court ordered Craig to see a therapist for "reunification" therapy with the father.

Despite this "therapy," Craig continued to resist visits with his father. Sometimes Craig would leave his house and go for a walk just prior to the time his father was scheduled to arrive. So the visit would have to be cancelled.

The father was upset with Craig's new method to assert his social rights, so he sought and obtained a new court order. This order required the caregiver to pressure Craig to stay at home when a visit was scheduled so he would be there when the father arrived. Craig's attorney did not object to this order.

The mother appealed from the visitation orders. She argued that Craig's constitutional rights were being violated by forced visitation. The appeal proceeded without any participation by Craig's attorney.

The Court of Appeal dismissed the appeal. The court ruled that the mother did not have "standing" to appeal. Only the party whose rights are being violated can appeal. It was not the mother's rights, but Craig's rights that were at stake. Since Craig's attorney did not appeal, no one could ask a higher court to reverse the judge's order.

This is when Nora and I found out about Craig's case. We both filed letters with the Supreme Court, asking the judges to review and reverse the Court of Appeal. The Supreme Court denied review. Since the Court of Appeal opinion is published, it creates binding precedent throughout the state.

When the case was returned from the appellate court to the lower court, the conservators (paid fiduciaries appointed by the court when the father objected to the mother being the conservator) made a bold move. They asked the court to officially take away Craig's right to make any social decisions and to grant them the authority to decide who Craig would socialize with or visit.

The judge indicated that he was going to make the decision at an upcoming hearing. But Craig no longer had an attorney. The judge had relieved him

from the case before the appeal occurred. So it appeared that Craig would not have an attorney at the upcoming hearing.

I researched the matter and discovered that Craig was entitled to a court-appointed attorney if his fundamental rights were at stake. If a conservatee requests an attorney, the judge has no choice in the matter. One must be appointed upon request.

So I wrote a request for Craig, he signed it, and I mailed it off to the judge. Having no discretion in the matter, the judge had to appoint an attorney.

We hoped that the new court-appointed attorney would fight for Craig's rights and advocate for his wishes not to be forced to visit with his father. Our hopes were soon dashed.

At the next court hearing, Craig surprised everyone when he got up in open court and made a statement: "I have a right to say no to Dad . . . I don't want to see you Dad . . . I don't want to see you anymore."

When I read the reporter's transcript, those words jumped off the page at me. For sure, Craig's attorney would respond by filing a motion to modify the visitation order to eliminate the forced visitation. The attorney would surely advocate for the stated wishes of her client.

Wrong! The attorney allowed the forced visitation to continue. Then she tried to broker a deal whereby the conservators would "share" social decisionmaking with Craig. The problem is that, when you read the "fine print" of the deal, if there is a conflict between Craig and the conservators on an issue, the decision of the conservators controls. So much for so-called "shared" decisionmaking.

In effect, Craig has a court-appointed attorney who is acting as a mediator, not an advocate for Craig. In reality, Craig does not have an attorney.

Craig's case is still pending, awaiting a hearing on whether Craig will keep his social decisionmaking rights or whether the authority to make social decisions will be granted to the conservators.

At this point, the issue is really academic because whichever way the judge rules, Craig's wishes will not be respected anyway. If the judge rules in favor of the conservators, Craig's attorney will not appeal since she does not advocate for Craig. The mother would like to appeal to protect Craig's constitutional rights, but the Court of Appeal has ruled that she lacks standing to appeal. The mother asked for help from several disability rights groups but none were willing to get involved in the case.

Unless a legal miracle happens, Craig will go through life being forced to visit with someone against his will. He will be a captive audience. His freedom of association – in this case, his right not to associate – will continually be disrespected.

What part of the First Amendment do probate judges and court-appointed attorneys not understand? And why are disability rights organizations not willing to get involved to protect the social rights of adults with developmental disabilities?

In the meantime, I am gathering letters from people who have known Craig for years. They are attesting to his ability to make social decisions and arguing that his right to do so should be respected.

Here are excerpts from one letter, written by someone who has known Craig for 13 years:

"Craig is part of a new generation of adults with Autism in the U.S. As the rate of Autism continues to climb . . . it is imperative to find efficient methods that allow autistic individuals to become self-sustaining adults without becoming tangled in a web of legal proceedings. Craig's case could become the precedent for how thousands of autistic people are treated in the future as they attempt to become contributing members of society."

"In order to be a contributing member of society, one needs to be taken seriously as a member of society. This means not undermining the rights of autistic people – in Craig's case, the court's ruling

that he must reconnect with his father."

"Craig does not wish to hurt or neglect anyone; he just wants to lead *his* own life and surround himself with people *he* likes. . . Craig's feelings need to be respected."

Another letter, written by a former teacher who has known Craig for 14 years, states:

"I can say confidently that Craig is more than able to make his own social decisions and is aware of what is safe and reasonable for his well-being. He is an adult with Autism, but knows his own mind and has a right to choose how he lives his life and with whom he spends his time."

Craig's case, and the other cases described earlier, touched our hearts and made us wonder about the malfunctioning of the Limited Conservatorship System. They prompted us to interview people who work in the system, to dig into court files, and to determine how badly the system may be broken.

Our preliminary finding is that major flaws permeate the system and the agencies that operate or participate in the system don't seem to notice these defects. So we must be "whistle blowers" for justice. Justice for people with developmental disabilities who are not able to advocate for themselves.

Researching Court Records

I wondered if these three cases were an aberration or whether the problems with the limited conservatorship system were systemic. If they are systemic, then is the problem with the legal foundation on which the system is based (statutes and court rules) or is the problem with the failure of relevant agencies to implement the policies properly? Or both?

I thought that the best place to begin my inquiry would be to start at the top. Ask questions and seek answers from the Supervising Judge of the Probate Court in Los Angeles.

I discovered that Judge Michael Levanas was a new supervising judge of the Probate Court. I thought that would work to my advantage. If the system was being operated improperly, he would not be responsible since he had just taken over the helm of the Limited Conservatorship System. Surely he would see that Nora and I are sincere and he would be willing to cooperate with our study.

I had an hour-long interview with him. Judge Levanas said that he had asked around about me and was told that I was competent and a strong advocate. But he seemed cautious about cooperating since he had never worked with me himself.

I told him about a few of our preliminary findings and gave him some written materials to review. I asked him some questions and suggested that he should delegate the matter to someone on his staff. I did not want to take up his precious time. He did not want to delegate the matter. He said that I should direct my questions to him.

Over the course of the next few days, I sent him a few emails with questions about statistics and procedures of the limited conservatorship system. That was several weeks ago.

I later followed up with an official request for access to records under Rule 10.500 of the California Rules of Court. I asked about 35 questions. The court gave direct answers to two of them and evasive answers to two or three more. It ignored the others.

So I used the court's online services and reviewed dockets in scores of limited conservatorship cases. I also went to the main courthouse to review documents in dozens of cases. The process and my findings are in an essay titled: "Searching for Clues: Putting Together Pieces of the Limited Conservatorship Puzzle by Examining Court Records."

The bottom line is that it appears that cases are being processed on a judicial assembly line. The participants are all doing their parts very efficiently – too efficiently – and none of them are seeing the big picture. There are almost no contested hearings. There are virtually no appeals.

The voting rights and social rights of thousands of adults with developmental disabilities are routinely being violated. The participants do not have bad intent, but neither do they have high regard for the constitutional rights of conservatees. The system just keeps cranking out conservatorship orders, over and over, at a pace that seems to be driven by fiscal concerns of administrators reacting to budget cuts.

Convening a Series of Conferences

After reviewing what we have discovered, Nora and I decided that it would be appropriate to convene a conference so that we could share our findings and our preliminary recommendations with people who should care about improving the system: parents and family members involved in the three cases; adult protective services personnel; the county bar association; the city's ADA compliance officer; case managers from the Regional Centers; Client's Rights Advocates; a disability rights legal center; a conservatorship legal services organization; etc.

We selected a date and a location. We sent out invitations. As of today, we 15 people are scheduled to attend the May 9th conference. Unfortunately, none of the Client's Rights Advocates we invited will be at the table.

We invited Judge Levanas to come, if only just for the introduction. We wanted him to welcome people and to let them know that the court is open to suggestions. He has not yet responded .

After reviewing our research materials, and talking about the myriad problems with the system, we eventually realized that one conference would not be sufficient. So we have scheduled four conferences, and even that many gatherings are barely enough to deal with so many complex issues with the care and depth they deserve.

Conference One: An Overview

The first conference will focus on the three case studies: Roy L, Nicky P, and Craig B. These cases will be used to examine flaws in policies and procedures that adversely affect the rights of adults with developmental disabilities who become involved in the limited conservatorship system.

The case of Roy L. will be our entry into the realm of ADA compliance and the duty of judges, court investigators, and attorneys to reasonably accommodate the special needs of conservatees with cognitive, communication, and physical disabilities.

The case of Nicky P. will inform our analysis of the duty of participants in the adult protection system and participants in the limited conservatorship system to investigate allegations of suspected abuse and to provide protection for potential and actual victims.

The case of Craig B. will provide an example of how participants in the system lack criteria, guidelines, and training regarding assessments of a proposed conservatee's capacity to make major life decisions (medical, residence, educational, marriage, sexual, social, etc.) Participants include: medical and mental health processionals, attorneys, case managers, court investigators, and judges.

Conference Two: Voting Rights

Our research has shown that the voting rights of adults with developmental disabilities are being routinely and systematically taken away. Federal voting rights laws are being violated. This conference will identify ways to stop future violations and to help people regain their voting rights.

Conference Three: Court-Appointed Attorneys

This conference will focus on flaws in the PVP court-appointed attorney system. The system itself may need to be scrapped and replaced. In addition to deficiencies in the appointment process, the inquiry will look at matters more fundamental, such as constitutional requirements, ethical considerations, professional standards, and potential and actual conflicts of interest inherent in the PVP system.

Conference Four: Assessment of Capacities

Judges need to decide not only whether a conservatorship should be granted, and who the conservator should be, but also which rights should be taken away from the conservatee and which they should retain.

Judges must rely on the participants in the system to help guide their decision on these important matters. What powers is the petitioner seeking? Does the PVP attorney object and why? What does the court investigator recommend? What does the Regional Center case manager have to say?

We have found that the participants do not have criteria to guide their decisions and recommendations. They have not received training on how to make valid capacity assessments or how to challenge invalid ones. As a result, judicial decisions are often based on superficial and routine judgments by untrained participants.

This conference will focus on the need for criteria on each of the "seven powers" and the need for training of all of the participants – case managers, attorneys, investigators – including the judges themselves.

Next Step: A Post-Conference Report

After the four conferences, a report will be written containing the best ideas emerging from the meetings. The report will be distributed to the Legislature, the Judicial Council, and to relevant Executive Branch agencies and nonprofit organizations.

Beyond the Report

After the report is distributed to relevant agencies and various leaders, we will ask for direct meetings with the Chief Justice of the Supreme Court in her role as Chairperson of the Judicial Council, the Chairperson of the Senate Judiciary Committee, the Chairperson of the Assembly Judiciary Committee, and the Attorney General.

A meeting with the Secretary of State and the Los Angeles County Registrar of Voters should occur to discuss the protection of the voting rights of proposed limited conservatees and how to restore the voting rights of current conservatees who have had those rights removed due to mistake or neglect of judicial officers or investigators or through ineffective assistance of PVP attorneys.

A meeting with the Presiding Judge and the Assistant Presiding Judge of the Los Angeles Superior Court would also be appropriate, since this report focuses on deficiencies of the Limited Conservatorship System in Los Angeles County.

Various Leadership Summits would also be appropriate. One meeting could involve members of the State Council on Developmental Disabilities, as well as representatives from all Area Boards.

Another Leadership Summit could be sponsored by the Association of Regional Center Agencies (ARCA) for participation by representatives of all Regional Centers in California.

Background Materials: Pre-Conference Essays

Searching for Clues: Putting Together Pieces of the Limited Conservatorship Puzzle by Examining Court Records.

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

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

PVP Training on Limited Conservatorships.

Legal Principles Governing Attempts to Restrict the Social Rights of Conservatees.

Social Rights Advocacy for Adults with Autism: Forced Socialization of Conservatees is Never Acceptable.

Limited Conservatorships: A System that Protects Adults with Developmental Disabilities Needs *Major* Reform

Pre-Conference Report

Preliminary Findings

This set of Preliminary Findings is being released prior to the first conference. The findings will be revised as the conference series progresses and as we learn more about the Limited Conservatorship System and its participants.

Please send any suggestions for corrections or additions to tomcoleman@earthlink.net.

General Information on the System

1. About 1,200 new petitions for limited conservatorships are filed each year in the Los Angeles County Superior Court.

2. About 90 percent of these petitions are filed by parents or family members who are not represented by an attorney. These are called "pro per" cases.

3. Prior to 2013, petitions were filed and cases were heard in the downtown court as well as several district court locations. In April 2013, court consolidation due to fiscal problems resulted in all cases being filed and heard downtown. Most cases are assigned to Department 29 where two judges alternate hearing cases. The only exception is that cases can still be filed in Lancaster.

4. There may be more than 30,000 "open cases" in limited conservatorships in Los Angeles County at any given time. There could be thousands more than that. Cases become open when the conservatorship order is initially granted and remain open until the conservatee dies. Petitions for modifications, or investigations due to suspected abuse, can be filed at any time, since conservatees are under the protection of the Probate Court.

5. The law requires court investigators to conduct investigations in all initial petitions, an annual review one year later, and then biennial investigations in conservatorships and guardianships.

6. There are about 2,000 new conservatorship cases (general and limited) filed each year in Los Angeles. There are about 2,000 new guardianship cases filed each year as well, for a total of 4,000 cases.

7. By our calculations, the Probate Court employs 10.5 investigators to investigate annually 4,000 new filings, 4,000 annual reviews, and 15,000 biennial reviews of the 30,000 open cases. That is 23,000 investigations per year that are mandated by law.

8. In 2008, the court's annual report said it had 10 investigators to do 10,000 investigations annually. Even if that were still true, that would require each investigator to do 5 investigations per field day (4 days a week, with one day to write 20 reports), taking vacations and holidays into consideration.

9. About 98 percent of new petitions are granted without objection and therefore without an evidentiary hearing. In the few cases in which a contested hearing does occur, the issue is generally about who should be appointed as conservator. Contested hearings on retention of rights by the proposed limited conservatee are rare. Appeals are more rare.

10. Educational programs are not offered by the court, by Regional Centers, or by nonprofit organizations, to teach parents or others prior to filing petitions about the duties of conservators, the rights of conservatees, or the criteria for assessing whether the proposed conservatee has or does not have the

capacity to make specific life decisions such as medical, financial, educational, sexual, social, etc.

11. Educational programs or materials are not offered by these agencies or organizations to teach parents or others who file petitions about the voting rights of people with developmental disabilities and about the protections afforded by federal voting rights laws.

12. Educational programs or materials are not offered by these agencies to inform parents or others who file petitions about the availability of court forms (MC-410) in which requests can be made for the court and court-appointed attorneys to use methods to reasonably accommodate the needs of proposed limited conservatees who have cognitive, communication, or physical disabilities.

13. Despite the fact that investigations by court investigators are mandated by state law on all initial petitions, in many cases the court is waiving such an investigation and allowing the report of the court-appointed (PVP) attorney to be used as a substitute.

14. Biennial investigations by court investigators do not appear to be occurring every two years as required by state law. In many cases, probate investigator reports are filed many months late. In one case, records show that such an investigation did not occur for 8 years on one occasion and did not occur for 4 years on another occasion. The extent of the delays and the backlog of biennial investigation was not shared with our Project by the court.

Bet Tzedek Legal Services

15. The Self Help Clinic operated by Bet Tzedek Legal Services helps petitioners fill out the requisite court forms in a majority of these cases. Bet Tzedek does not provide legal advice to petitioners at the clinics it runs. It does sometimes represent a petitioner (parent or family member) in a complex case. It does not represent proposed limited conservatees.

16. The clinics provide administrative help to petitioners, assisting them in filling out petitions and other forms. The clinics do not answer legal questions, nor do they explain anything about voting rights or provide guidelines for determining whether to ask the court to take away the decisionmaking rights of the proposed conservatee in regards to social, sexual, and other major life decisions.

17. The clinics advise parents on how to fill out fee waiver forms. Parents are advised that if they base financial information on the income of the proposed conservatee, rather than on themselves as petitioners, the court generally will waive fees and costs associated with filing the petition.

18. The vast majority of petitions filed through Bet Tzedek receive fee waivers, thus saving the petitioners $435 each. Based on 1,200 petitions being filed annually, fee waivers reduce court revenue by hundreds of thousands of dollars each year.

PVP Court-Appointed Attorneys

19. The Los Angeles Superior Court has established a Probate Volunteer Panel (PVP) for which attorneys may sign up if they wish to receive appointments to represent proposed or actual conservatees in general or limited conservatorship cases.

20. Local Court Rule 4.123 establishes the general requirements attorneys must meet before they are placed on the PVP qualified attorney list.

21. Local Rule 4.124 specifies the requirements for specific areas of interest. For eligibility to be appointed in limited conservatorship cases, attorneys must meet the requirements listed in Rule 7.1101(b)(2) of the California Rules of Court. In addition, "the attorney must understand the legal and medical issues arising out of developmental disabilities and the role of the Regional Center."

22. Based on the performance of some PVP attorneys, and based on interviews with some participants, it appears that compliance with Local Rule 4.123 is based on the "honor system" of self certification. The court does not have any quality assurance measures to determine if, in fact, the attorneys

understand the legal and medical issues arising out of developmental disabilities.

23. Some PVP attorneys are acting as de-facto guardians ad litem and are advocating for what they believe are the best interests of the client rather than advocating for what the client expressly wants.

24. Some PVP attorneys are not objecting to court orders that unreasonably restrict the social decisionmaking rights of the client.

25. Courts are relieving PVP attorneys as counsel of record at the time an order is made granting an initial petition.

26. Courts are not requiring PVP attorneys to notify clients, verbally and in writing, of their rights to: (1) complain to the court if they feel the attorney is not performing adequately and their right to ask for a "Marsden" hearing outside of the presence of other parties; (2) the right to appeal if they disagree with the order of the court and their right to have a court-appointed attorney on appeal; (3) the right to petition the court at any time in the future if they want to change conservators or to have any of their own rights restored; and (4) their right to have an attorney appointed to represent them in the future if they want to file such a petition of if they want to object to a petition filed by a conservator that will further restrict their rights.

27. PVP attorneys are appointed by judges in the Probate Court. The appointments do not appear to be made on a rotational basis so that all attorneys on the qualified list receive a fair share of appointments. A review of cases in 2012 showed that some attorneys received 30 or 40 appointments, while many received only 2 or 3.

28. The practice of waiving reports from court investigators, and substituting PVP reports instead, has the effect of turning attorneys who should be advocates into de facto court investigators, thus creating conflicts of interest, breaching client confidentiality, and diminishing the prospect that attorneys will provide effective assistance of counsel.

29. The Presiding Judge of the Probate Court issued a general order in 2011 restricting payments to PVP attorneys. Without prior approval from the appointing judge, PVP attorneys may not charge more than $125 per hour and may not bill the court for more than 10 hours of work.

County Supervisors and Agencies

30. The practice of such court investigator waivers also has the effect of shifting costs from the state budget (and the court's own budget) to the budget of the County of Los Angeles. Orders for payment of PVP attorneys are usually directed to the county which must then pay the attorneys. While the county bears the cost for these attorney services, county supervisors have no say when it comes to the quality of such services and have no way of knowing whether the county is paying for constitutionally defective representation of limited conservatees. Justice Deputies of supervisors are not focusing attention on the Limited Conservatorship System.

31. Adult Protective Services has a mandate to receive reports of suspected abuse and neglect of dependent adults. This includes adults with developmental disabilities. APS has a mandate to cross report cases to law enforcement and to other local agencies with a duty to investigate cases of suspected abuse or neglect.

32. The Probate Court has a duty to investigate cases of suspected abuse of limited conservatees.

33. When it receives a report of suspected abuse of a person who is a limited conservatee, APS does not always report such cases to the Probate Court, despite the legislative mandate described above.

County Bar Association

34. The Probate Court has contracted with the Los Angeles County Bar Association to provide trainings for attorneys who want to be placed on the general PVP list. The bar association also provides trainings for attorneys who want to be eligible for appointments in limited conservatorship cases.

35. The County Bar Association provided some information about a PVP attorney training it conducted in 2013. The training, which lasted two hours, is summarized in an essay written by me which is titled: "PVP Training on Limited Conservatorships." Requests for information about PVP trainings in 2012 were not provided by the County Bar Association nor was any information on such trainings provided by the Probate Court, despite formal requests for such information pursuant to Rule 10.500 of local court rules.

36. The 2013 Limited Conservatorship PVP training by the County Bar Association did not include presentations or materials on: (1) constitutional rights of adults with developmental disabilities, especially in the areas of social rights and sexual rights; (2) constitutional requirements for providing effective assistance of counsel to proposed limited conservatees, including advocacy for their wishes rather than the attorney's opinion as to their best interests; (3) conflicts of interest involved in trying to be an advocate for a client and also serving as a de facto investigator for the court; (4) ethical and professional guidelines for representing clients with diminished capacities; (5) client confidentiality requirements that may be breached by filing reports with the court, open to the public, that disclose information adverse to retention of rights by the client; (6) forensic interviewing of people with developmental disabilities; (7) ADA compliance by attorneys and courts, including accommodations for clients with cognitive, communication, and physical disabilities; (8) voting rights of adults with developmental disabilities, ADA accommodation requirements for filling out voter registration affidavits, and prohibitions and protections in federal voting rights laws; (9) requirements for credible assessments of client capacities by Regional Centers and professionals who render such opinions and strategies for challenging assessments not based on solid medical or psychological criteria or on solid facts.

Regional Centers

37. Regional Centers are nonprofit agencies under contract with the State Department of Developmental Disabilities. Their clients are children and adults with developmental disabilities.

38. Regional Centers are mandated by law and contract to coordinate services for their clients. They conduct annual assessments of the needs and abilities of their clients.

39. There are seven Regional Centers in Los Angeles County. These Regional Centers belong to an Association of Regional Center Agencies which has headquarters in Sacramento.

40. Regional Centers are obligated by law to render an opinion to the Probate Court, upon request, regarding the capacity of a proposed limited conservatee to make major life decisions, such as medical, financial, residence, education, marriage, social contacts, and sexual relations.

41. The court is supposed to consider the Regional Center report on capacity assessments prior to entering an order granting or denying a petition for a limited conservatorship.

42. In a considerable number of cases, courts are entering orders granting such conservatorships without Regional Center reports. These reports sometimes are filed months after an order has been entered.

43. Regional Center case managers and others who submit reports in conservatorship cases do not have criteria and guidelines for making these assessments. They are not receiving formal training by licensed medical or mental health practitioners about how to make credible and valid assessments about a client's decisionmaking capacities on these issues.

44. People who work for Disability Rights California serve as Client Rights Advocates and are housed at Regional Centers. Disability Rights California is under contract with the State Department of Developmental Services to advocate for the rights of Regional Center clients. It appears that Client Rights Advocates play no part in the Limited Conservatorship System. They do not get involved

when the rights of a proposed conservatee are infringed by participants in the Limited Conservatorship System. Client Rights Advocates are not monitoring or advocating when it comes to voting rights, social rights, sexual rights, or the right to effective assistance of counsel.

Judges

45. Judges assigned to hear petitions in limited conservatorship cases do not appear to receive trainings at judicial seminars and conferences about medical, psychological, or legal issues involving people with developmental disabilities. Appellate judges are unaware of problems in the Limited Conservatorship System because there are virtually no appeals. As a result, there is no body of appellate case law to instruct lower court judges and attorneys on proper practice and procedure in this system.

State Agencies

46. The State Department of Developmental Services appears to have no role in protecting the rights of limited conservatees or in monitoring the activities of any of the participants in the Limited Conservatorship System.

47. The State Council on Developmental Disabilities, and its Area Boards, appear to have no role in the monitoring of the Limited Conservatorship System or in advocating for limited conservatees.

48. The Department of Justice and the California Attorney General do not appear to be involved in protecting the rights of limited conservatees.

49. The Secretary of State does not appear to be aware that voting rights of adults with developmental disabilities are being routinely violated. Perhaps 90 percent of limited conservatees are losing the right to vote. (Based on a review of 61 cases filed in Los Angeles during Aug-Dec 2012.)

Judicial Council

50. The Judicial Council of California (the rule making body for the courts) and the Administrative Office of the Courts (staff who operate the court system) do not appear to be aware of the flaws in the Limited Conservatorship System. The Chief Justice of the Supreme Court is unaware of these problems.

Legislature

51. The judiciary committees of the Assembly and Senate were not aware of the flaws in the Limited Conservatorship System. These committees conducting auditing and oversight of this system. Our Project recently contacted staff members of these committees to alert them of our upcoming conferences.

U.S. Department of Justice

52. The Civil Rights Division of the United States Department of Justice has a Voting Section that enforces federal laws protecting voting rights. It also has a Disability Rights Section that protects the rights of people with disabilities. It appears that the Department of Justice is not aware of the systematic and routine violation of ADA accommodation laws the Limited Conservatorship System.

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