

# PVP Training on Limited Conservatorships – Part I

by Thomas F. Coleman

The Disability and Abuse Project has been researching the extent of training received by PVP attorneys in Los Angeles on legal and medical issues involved in limited conservatorships.

The only training program we discovered is one that is sponsored by the Los Angeles County Bar Association. This training is authorized by the Probate Court for attorneys who want to be placed on the limited conservatorship PVP appointment list or who want to stay on that list.

When I initially asked the Probate Court for information about attorney training programs, the Presiding Judge directed me to Jonathan Rosenbloom, a volunteer attorney with the Los Angeles County Bar Association who coordinates the bar association's training programs.

Jonathan informed me that one PVP training program on limited conservatorships was conducted in 2013. A general PVP training program will be conducted on April 26, 2014, but it only contains about 45 minutes of information about representing clients in limited conservatorship cases.

The 2013 training occurred on January 24, 2013, at the downtown courthouse. It lasted for two hours.

During this brief training program, five attorneys made presentations. The main presentation was made by Steven Beltran. Short presentations by the other four attorneys followed.

Bertha Sanchez Hayden familiarized attorneys with some new local court forms on various technical procedural issues.

Steven Awakuni discussed an example of a court order granting a petition and specifying which of the "seven powers" would be given exclusively to the conservators, which exclusively to the conservatee,

and which would be shared powers. He also discussed a section of a practice guide published by the Continuing Education of the Bar, advising attorneys that they must submit an attachment to any proposed order and that such attachment must specify which of the "seven powers" will be taken away from the limited conservatee.

Jeffrey Shuwarger discussed "dual diagnosis" issues when a person is diagnosed with a mental disorder (LPS Conservatorships) and a developmental disability (Limited Conservatorships).

Jeffrey Marvan discussed PVP attorney interactions with the client and the family. He also stressed the importance of the attorney understanding that the purpose of a limited conservatorship is to promote as much self-reliance and independence for the conservatee as possible. This portion of the presentation was helpful. However, two portions of his presentation were troubling.

He said that a secondary role of the PVP attorney is to help the petitioners (usually parents) get their case handled efficiently.

He encouraged the PVP attorney to "help petitioner fill out the Order Appointing Conservator, Duties and Liabilities, Letters, and Care Plan." Of course, having a licensed attorney advise a party to the case and help them complete legal forms is a form of legal representation.

Another area of his presentation focused on contested cases. One item is that area stated: "PVP as a mediator."

Marvan's presentation suggested three possible roles for the PVP attorney: an advocate for the client; assisting the petitioner in preparing essential legal forms; and as a mediator in a contested proceeding.

An attorney cannot represent a proposed conservator and a proposed conservatee. This presents a classic conflict of interest. So I question the assertion that PVP attorneys play a “dual role” in a limited conservatorship case.

As for the possible third role as a mediator, that would also conflict with the role as an advocate for the proposed limited conservatee.

A PVP attorney should have only one role: to advocate for and give advice to the proposed conservatee.

From my review of the materials provided by Jonathan, it appears that the presentation by Steven Beltran was more extensive than the others. His talk was titled: ‘PVP Attorney Considerations for Persons with Special Needs.’

He addressed: the general definition of special needs; the entitlement of people with developmental disabilities to Regional Center services; government benefits available to Regional Center clients; guardianships; general conservatorships; special education and individual education plans; special needs trusts; and estate planning.

A small portion of his presentation focused on limited conservatorships. He listed the “seven powers” involved in these proceedings. He also discussed the role of the Regional Center in preparing a report with recommendations as to which of the “seven powers” the conservatee should retain.

Nowhere in the training program were any of the following topics addressed:

- \* constitutional rights of limited conservatees and how to protect those rights;
- \* voting rights of limited conservatees and federal laws protecting voting rights of people with disabilities;
- \* Americans with Disabilities Act and ADA accommodation requirements for the Probate Court and for PVP attorneys;

\* criteria for assessing client capacities on each of the “seven powers” or how to challenge assessments which are not scientifically valid or not supported by substantial evidence;

\* how to conduct a forensic interview of a client with a developmental disability.

There was also no presentation about ethical rules and professional standards governing the confidentiality of client communications to the PVP attorney and the confidentiality of information gathered by an attorney on behalf of his or her client.

Also not discussed in the training program were these important topics:

\* how to understand, interpret, and use a “capacity declaration” submitted by a medical doctor or psychologist;

\* understanding the various types of intellectual and developmental disabilities and their impact on daily living and capacity for decisions (Autism Spectrum Disorder, Cerebral Palsy, Fragile X Syndrome, Down Syndrome, Epilepsy, Fetal Alcohol Syndrome, and Intellectual Disabilities (formerly called Mental Retardation), among others.); understanding various communication methods and behavioral characteristics.

Nor did any speaker address these issues:

\* limits on time allocated to a case and when to ask for more;

\* standards for ineffective assistance of counsel (IAC) as applied to a limited conservatorship case; the right of a client to a “Marsden” hearing to ask for a new attorney or complain about an attorney’s performance;

\* appellate rights of clients, including habeas corpus to challenge an order due to IAC.

The only presenters at this training were these five attorneys. There were no presenters from a Regional Center. Not included in the program were presentations by disability rights advocates, social workers, psychologists, or medical professionals.