

Civil Rights Agencies in California are MIA for Conservatees

By Thomas F. Coleman
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Three California civil rights enforcement agencies are effectively missing in action when it comes to protecting people with developmental disabilities whose rights are violated in probate conservatorship proceedings. There are some 50,000 conservatees with developmental disabilities in California, with about 5,000 new petitions filed annually in the state.

The most conspicuously absent civil rights enforcement agency is the California Department of Justice. Although the Attorney General is the chief law enforcement officer of the state and the DOJ has a civil rights enforcement section, this authority is illusory when perpetrators are state actors. Because the DOJ provides legal advice to state entities and represents them when they are sued, employees in the civil rights enforcement section will not lift a finger to help victims of discrimination committed by a state officer or entity. The department's allegiance is with the state entities that are committing the civil rights violations.

The Department of Fair Employment and Housing (DFEH) has the authority to investigate and civilly prosecute state-funded entities that discriminate on the basis of disability. Courts that fail to provide meaningful participation and effective communication to litigants with developmental disabilities in conservatorship proceedings violate Government Code Section 11135 – a statute for which DFEH has enforcement powers.

The courts presiding over conservatorship proceedings are state-funded entities and the proceedings are state-funded programs or activities. As a result, judicial officers and court employees are obliged to ensure “equal access” to these proceedings to everyone regardless of disability.

The Fair Employment and Housing Council is the agency which promulgates regulations to implement

Section 11135. It is currently in the process of defining how this broad-based statute applies to conservatorships and other legal proceedings.

The Department of Developmental Services (DDS) is charged with enforcing the rights guaranteed to individuals with developmental disabilities by Welfare and Institutions Code Section 4502. The declaration of rights in this statute is part of the Lanterman Developmental Disabilities Services Act which prohibits any program or activity receiving public funds from discriminating on the basis of disability or denying equal access to individuals with developmental disabilities.

Courts receive public funds, as do public defenders and private counsel appointed to represent indigent clients with developmental disabilities. As a result, judicial officers, court employees, and publicly-funded

legal service providers are obliged to comply with the mandates of Section 4502.

Existing DDS regulations spell out in considerable detail the “access rights” which programs or activities receiving public funds must afford to individuals with developmental disabilities.

According to Section 50510 of Title 17 of the California Code of Regulations, access rights include: (1) a right to advocacy services to protect and assert the civil, legal, and service rights to which any person with a developmental disability is entitled; (2) a right to be free from discrimination by exclusion from participation in, or denial of the benefits of, any program or activity which receives public funds solely by reason of being a person with a developmental disability; and (3) a right of access to the courts to assert rights and to contest a conservatorship, its terms, or the individual or entity appointed as conservator.

State regulations establish administrative procedures



with DFEH to file complaints for alleged violations by state-funded programs or services for violations of Section 11135. They also specify procedures for complaints with DDS for alleged violations of Section 4502 and Section 50510.

These procedures might as well be written in invisible ink. People with developmental disabilities are not aware of them. Neither are advocacy organizations that could serve as surrogates for victims of discrimination in filing complaints for them.

Neither DDS or DFEH has engaged in pro-active measures to educate surrogate advocates or self-advocates that their agencies have jurisdiction to provide remedies to people with developmental disabilities whose rights have been violated by judicial officers, court employees, or publicly funded legal service providers.

These agencies are behaving as though courts, public defenders, and publicly funded court appointed counsel are untouchables in terms of civil rights enforcement by executive branch agencies. They are not. When these civil rights statutes were enacted, the Legislature did not create exemptions for courts and legal services programs.

We hear time and time again that “no one is above the law.” Perhaps the governor and cabinet secretaries to which DDS and DFEH are responsible should remind these agencies of this adage of legal accountability.

These agencies have been approached in the past and were urged to step up their game with respect to protecting the civil rights of individuals with developmental disabilities who become ensnared in conservatorship proceedings. So it is not as though officials in the executive branch are unaware of the ongoing civil rights violations occurring in probate conservatorship proceedings.

A group of advocates met in 2017 with legal counsel to DDS and a deputy secretary of the Health and Human Services Agency. The same year, advocates met with the director of DFEH and the acting secretary of the Business, Consumer Services, and Housing Agency.

DFEH expressed a vague willingness to do so, but

to date has taken no meaningful action in this regard. DDS listened and then responded with denials of authority under existing law.

The Lanterman Act declares that persons with developmental disabilities have the same legal rights and responsibilities guaranteed all other individuals by the United States Constitution and the laws of the State of California. This includes the due process right to a fair hearing and to effective assistance of counsel. It also includes the right to be free from disability discrimination under state and federal laws.

People with developmental disabilities are entitled to the full attention of all three branches of government to protect these constitutional and statutory rights. The legislative branch has acted by passing Section 11135 and Section 4502. The executive branch has partially acted by establishing administrative complaint procedures. Full attention would require DFEH and DDS to alert victims and surrogate advocates that these agencies will process complaints of civil rights violations by courts and legal services programs. The judicial branch has given partial attention, but in the wrong way – violating the rights of these individuals.

If DFEH and DDS use their legal authority and administrative resources to investigate and remedy violations by courts and legal service providers, the civil rights ball will be thrown back into the court of the judicial branch. Eventually, the Supreme Court will be called upon to affirm the authority of the executive branch to investigate violations of the rights of individuals with developmental disabilities in the context of conservatorship proceedings.

Unfortunately, without a landmark decision of the Supreme Court on this matter, the saying that “no one is above the law” will continue to ring hollow for litigants with developmental disabilities whose rights are being routinely violated in probate conservatorship proceedings. Making these rights become realities for this population remains largely in the hands of the civil rights enforcement agencies whose actions will enable or preclude the Supreme Court from ever making such a ruling. ♦♦♦

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