Civil Rights Agencies MIA for Conservatees with Developmental Disabilities

A Report to

Governor Gavin Newsom

Thomas F. Coleman
Legal Director
Spectrum Institute

May 13, 2021

Mental Health Project
Disability and Guardianship Project

1717 E. Vista Chino A7-384 • Palm Springs, CA 92262
(818) 230-5156 • www.spectruminstitute.org

May 13, 2021

Hon. Gavin Newsom
Office of the Governor
State of California

Attn: Dr. Mark Ghaly, Secretary, Health & Human Services Agency
Lourdes Castro Ramírez, Secretary, Business, Consumer Services & Housing Agency

Dear Governor Newsom:

This report is directed to you because a clear signal is needed from the chief executive of the State of California directing civil rights enforcement agencies to allocate resources to protect the rights of conservatees and proposed conservatees with developmental disabilities.

Although the following language does not exist in statutes, regulations, or judicial decisions, for all practical purposes these agencies are acting as though it does:

> "The civil rights specified in the Welfare and Institutions Code Section 4502, the nondiscrimination provisions in Government Code Section 11135, and the administrative authority of the Department of Developmental Services and Department of Fair Employment and Housing to investigate and remedy alleged violations of these provisions do not apply to conservatees and proposed conservatees with developmental disabilities. Despite contractual provisions or statutory mandates to the contrary, Disability Rights California shall have no authority or responsibility to advocate for or defend the rights of conservatees or proposed conservatees with developmental disabilities."

There are about 50,000 adults with developmental disabilities in existing conservatorships. There are approximately 5,000 more adults with developmental disabilities who have probate conservatorship petitions pending and awaiting adjudication at any given time. Many of these adults are victims of discrimination and injustices that violate Section 4502 and Section 11135. Perpetrators may be courts, public defenders, or attorneys paid with public funds.

Procedures exist for DDS to receive and process complaints for violations of Section 4502. However, DDS is not doing so with respect to victims who are conservatees or proposed conservatees. Administrative procedures also exist for DFEH to initiate investigations on its own motion, or to receive and process complaints for violations of Section 11135. However, DFEH is not doing so with respect to victims who are conservatees or proposed conservatees. Part of the problem is bureaucratic malaise. These departments have not devoted time,

attention, and resources in the past to protecting the rights of this class of people with developmental disabilities. There are no protocols or precedents for investigating and processing such cases. Therefore, the status quo of administrative noninvolvement prevails.

Part of the problem is the nature of developmental disabilities. The cognitive and communication limitations associated with most developmental disabilities preclude conservatees and proposed conservatees from advocating for themselves much less even being aware that their rights are being violated. That is why it is necessary for others, such as clients' rights advocates, to be proactive in spotting such violations when they occur and taking remedial action on behalf of these individuals.

Disability Rights California has a duty to "[p]ursue administrative, legal, and other appropriate remedies or approaches to ensure the protection of the rights of people with disabilities." (Welfare and Institutions Code Section 4902(a)(2)) Through a contract with DDS, DRC receives about $6 million per year to protect the civil rights of people with developmental disabilities. Neither the statute nor the contract exempt DRC from the responsibility to advocate for and defend the rights of adults with developmental disabilities who are conservatees or proposed conservatees. Nonetheless, DRC expends virtually no time or resources to protecting the civil rights of this class of people with developmental disabilities.

The contract of DRC with DDS gives this protection and advocacy organization authority, indeed a duty, to do all of the following for adults with developmental disabilities who are regional center clients: (1) provide clients' rights advocacy services that are responsive to the access needs of persons with disabilities; (2) provide consultation and assistance, including representation in administrative proceedings; (3) protect and assert the rights of regional center clients in the denial of rights process described in Title 17 of the California Code of Regulations; (4) pursuant to Title 17, to investigate and take action to resolve complaints regarding the denial of rights to which the individual is entitled; (5) initiate action on behalf of an individual who is unable to register a complaint on their own behalf; and (6) provide consultation and assistance to consumers who are engaged in civil proceedings, including assisting public defenders and providing consultation to public defenders and to the court.

Regulations specify that "access rights" include the right to contest a conservatorship or its terms and/or the individual or entity appointed as conservator. (17 CCR Sec. 50510)

Despite these clear statutory protections, unambiguous regulatory and contractual mandates, and ample funding for advocacy services, DRC is not advocating for the rights of conservatees and proposed conservatees with developmental disabilities. Although DDS is aware of this problem, the department has taken no action to remedy it.

Even though the Attorney General is the chief law enforcement officer of the state, the Department of Justice has chosen not to take any action to protect the civil rights of conservatees and proposed conservatees with developmental disabilities. Perhaps this is because that office provides advice and legal representation to state entities who violate the civil rights of this population. For whatever reason, the Civil Rights Enforcement Section of the Department of Justice, and the Attorney General, have failed to take any action to help these vulnerable victims of discrimination.

As a result, the duty to protect falls to executive branch departments under the supervision of the governor. That is why this report is being director to you.

As governor, you can direct the agency secretaries who oversee DFEH and DDS to investigate this civil rights enforcement void and to recommend ways to protect the rights of conservatees and proposed conservatees with developmental disabilities.

As governor, you can also direct the Department of Finance to ensure that the budgets of DFEH and DDS include a provision to fund administrative procedures to investigate and process complaints regarding the civil rights violations of conservatees and proposed conservatees with developmental disabilities. You can also insist that DDS include a specific provision in its contract with DRC emphasizing the duty to advocate for the rights of conservatees and proposed conservatees with developmental disabilities.

Individuals with developmental disabilities cannot defend their own rights. They lack the ability to protest when their civil rights are violated by courts or attorneys – entities and professionals who receive public funds and who are thus subject to state civil rights laws.

Perhaps DDS and DFEH will be willing to become proactive in addressing this problem. However, in order for them to do so, they should receive assistance from an advocacy organization with authority to represent these individuals, either individually or as a class. DRC is receiving millions of dollars per year for such advocacy services and therefore is in a unique position to assist DDS and DFEH in this regard.

We urge you to request the Secretary of the Health and Human Services Agency, the Secretary of the Business, Consumer Services and Housing Agency, and the Director of the Department of Finance to review these materials and to provide the Office of the Governor with suggestions on how to effectively address the problems identified herein.

Respectfully submitted:

Thomas F. Coleman
Legal Director
tomcoleman@spectruminstitute.org

cf. https://disabilityandguardianship.org/drc-report.pdf

cc: Attorney General Rob Bonta; Chief Justice Tani Cantil-Sakauye; State Council on Developmental Disabilities; Disability Rights California; Arc of California; California Siblings Leadership Network; TASH; Association of Regional Center Agencies; California Disability Services Association

Exhibits

Report Online:
https://disabilityandguardianship.org/mia-report.pdf

Civil Rights Agencies in California are MIA for Conservatees

By Thomas F. Coleman
Daily Journal / May 5, 2021

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. DSS 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. ◊◊◊

Thomas F. Coleman is the legal director of Spectrum Institute. tomcoleman@spectruminstitute.org

Administrative Complaint Procedures of Two Agencies Are Available to Conservatees and Proposed Conservatees with Developmental Disabilities for Violations of Access Rights

People with developmental disabilities, like everyone else, have a right of "access to the courts." This right is specifically recognized and emphasized in the portion of the California Code of Regulations implemented by the Department of Developmental Services (DDS). (17 CCR § 50510) This regulation implements the statement of rights contained in Welfare and Institutions Code Section 4502. That statute affirms the right of people with such disabilities to full participation in any program or activity that receives public funds. Courts and their agents receive public funds.

Legal proceedings are an activity of the courts. Full participation in a legal proceeding would include the right to examine and evaluate pleadings, develop a defense, offer objections, make motions, produce evidence, challenge evidence, call witnesses, cross-examine witnesses, and file an appeal.

People with developmental disabilities are denied access to the courts and full participation in conservatorship proceedings when their disabilities prevent them from performing these activities. Appointment of counsel, therefore, is required to ensure that they have meaningful participation in such complicated legal proceedings. Furthermore, to ensure equal access, appointed counsel must perform competently and provide effective assistance. The rights of such litigants under this statute and this regulation are coextensive with their "equal access" rights under the Americans with Disabilities Act and under Government Code Section 11135.

Relevant portions of Section 50510 appear below:

"Each person with a developmental disability . . . is entitled to the same rights, protections, and responsibilities as all other persons under the laws and Constitution of the State of California and the Constitution of the United States. . . These rights include, but are not limited to the following:
"(A) Access Rights . . .

> (10) A right to advocacy services, as provided by law, to protect and assert the civil, legal, and service rights to which any person with a developmental disability is entitled.
>
> (12) A right of access to the courts for purposes including, but not limited to the following:
>
> > (D) To contest a guardianship or conservatorship, its terms, and/or the individual or entity appointed as guardian or conservator."

Conservatees and proposed conservatees can file administrative complaints with Department of Fair Employment and Housing (DFEH) under Section 11135 for disability discrimination committed by state-funded government entities. Courts are funded by the state. DFEH should interpret and implement Section 11135 in a manner that protects the equal access rights of such persons under Section 4502 and Section 50510. (Cf. *Payne v. Superior Court*, 17 Cal. 3d 908 (Cal. 1976))

Furthermore, Title 17 of the California Code of Regulations establishes an administrative complaint procedure to implement the provisions of the Lanterman Act protecting the rights specified in Section 4502 when these rights are allegedly violated by any program or activity which receives public funds. This includes "access rights" such as the right of access to the courts, advocacy services, and a right to contest conservatorship proceedings. (17 CCR § 50510) Therefore, conservatees and proposed conservatees should be entitled to use the Department of Developmental Services complaint procedure (17 CCR § 50540) to contest violations of Lanterman Act rights committed by courts, court employees, public defenders, court-appointed counsel, or others who receive public funds.

Lanterman Developmental Disabilities Services Act

California Welfare and Institutions Code

Statement of Rights

4502. Persons with developmental disabilities have the same legal rights and responsibilities guaranteed all other individuals by the United States Constitution and laws and the Constitution and laws of the State of California.

No otherwise qualified person by reason of having a developmental disability shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity, which receives public funds.

It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: (a) A right to treatment and habilitation services and supports in the least restrictive environment. Treatment and habilitation services and supports should foster the developmental potential of the person and be directed toward the achievement of the most independent, productive, and normal lives possible. Such services shall protect the personal liberty of the individual and shall be provided with the least restrictive conditions necessary to achieve the purposes of the treatment, services, or supports. (b) A right to dignity, privacy, and humane care. To the maximum extent possible, treatment, services, and supports shall be provided in natural community settings. (c) A right to participate in an appropriate program of publicly supported education, regardless of degree of disability. (d) A right to prompt medical care and treatment. (c) A right to religious freedom and practice. (f) A right to social interaction and participation in community activities. (g) A right to physical exercise and recreational opportunities. (h) A right to be free from harm, including unnecessary physical restraint, or isolation, excessive medication, abuse, or neglect. (i) A right to be free from hazardous procedures. (j) A right to make choices in their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation.

4502.1. The right of individuals with developmental disabilities to make choices in their own lives requires that all public or private agencies receiving state funds for the purpose of serving persons with developmental disabilities, including, but not limited to, regional centers, shall respect the choices made by consumers or, where appropriate, their parents, legal guardian, or conservator. Those public or private agencies shall provide consumers with opportunities to exercise decisionmaking skills in any aspect of day-to-day living and shall provide consumers with relevant information in an understandable form to aid the consumer in making his or her choice.

Spectrum Institute

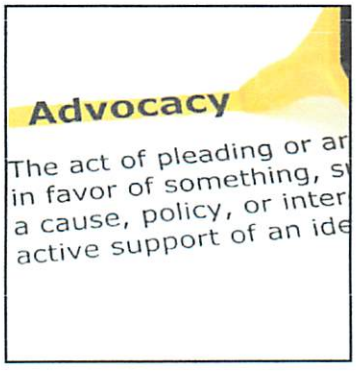
Disability Rights California Can Become a Leading Advocate for Access to Justice in Conservatorship Proceedings

by Thomas F. Coleman

Disability Rights California is the "protection and advocacy" agency in California. As such, the California Legislature has given DRC authority to "[p]ursue administrative, legal, and other appropriate remedies or approaches to ensure the protection of the rights of people with disabilities." (Welfare and Institutions Code Section 4902(a)(2))

The State of California provides millions of dollars per year to DRC to perform advocacy functions for people with disabilities. That state funding is over and above the considerable money DRC receives from the federal government and other sources.

In addition to central staff, which includes a team of lawyers, DRC has clients' rights advocates in each of the regional centers throughout the state. DRC's Office of Clients' Rights Advocacy (OCRA) has a memorandum of understanding with all 21 regional centers that requires it to "comply with all applicable state, federal, departmental and regional center laws, contracts, and MOU's governing the protection of clients' rights."



Such laws include the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, California's Lanterman Developmental Disabilities Services Act, and California Government Code Section 11135. Each of these statutes applies to adults with intellectual and developmental disabilities who receive court orders requiring them to participate in probate conservatorship proceedings. These laws guarantee people with disabilities meaningful participation and effective communication in such court proceedings.

The MOU between OCRA and each regional center specifies that clients' rights advocates will be available for consultation to regional center clients and staff regarding conservatorship matters. Also mentioned in the MOU's is a role for clients' rights advocates to investigate and process complaints for violations of Title 17 of the California Code of Regulations.

Title 17 includes a section on "access rights." (17 CCR Sec. 50510) This includes a right to advocacy services to protect and assert the civil, legal, and service rights to which any person with developmental disabilities is entitled. It also includes a right of access to the courts to contest a conservatorship, its terms, and/or the person appointed as a conservator.

The Lanterman Act says that no person with a developmental disability shall be denied the benefits of or be subjected to discrimination under any program or activity which receives public funds. (Welfare and Institutions Code Sec. 4502) Conservatorship proceedings are activities of the courts. Courts receive public funds. It is therefore a violation of the Lanterman Act when people with developmental disabilities are denied access to justice in such proceedings.

DRC has a multi-year contract with the Department of Developmental Services. Under the contract, DRC has a duty to provide clients' rights advocacy services responsive to the access needs of persons with disabilities. For tens of thousands of adults with developmental disabilities, there is a need for access to justice in conservatorship proceedings.

The contract specifies that DRC shall protect and assert the rights of people with developmental disabilities under Title 17 of the California Code of Regulations. Of course, this would include "access rights" in conservatorship proceedings as described in Section 50510.

In addition to investigating and taking action to resolve complaints initiated by regional center

clients or their representatives, DRC also has authority to initiate action on behalf of clients who are unable to register complaints on their own behalf. This includes clients engaged in civil proceedings. Conservatorships are civil proceedings.

Based on these statutory and contractual grants of authority, it is clear that Disability Rights California should be playing a major role in advocacy for individual regional center clients whose rights are being violated in conservatorship proceedings. Such rights violations may be premised on the policies and practices of the courts, or on the failures of regional centers, court investigators, or court-appointed attorneys to protect the rights of conservatees and proposed conservatees under state and federal laws – including disability rights laws.

DRC does not have to wait for specific complaints to be presented to it. Because of the nature and extent of their disabilities, most regional center clients would not know that their rights are being violated by judges, attorneys, or other participants in conservatorship proceedings.

If DRC waits for individual complaints, the legal system will perpetually deny access to justice to regional center clients because these clients generally lack the ability to complain. Therefore, to fulfill the advocacy role mandated by statute and by contract, DRC should be pro-active. It should identify systemic deficiencies. It should shine a light on policies and practices that deprive regional center clients of the access rights to which they are entitled in conservatorship proceedings.

These deficiencies have been brought to the attention of DRC over the past several years. Individual injustices in cases such as Mickey Parisio (2012) and Gregory Demer (2013) have been presented to DRC. Unfortunately, DRC did not advocate for these individuals in their time of need.

The problem of systemic injustices and the need for class-based reform have also been brought to the attention of DRC over the years. DRC was invited to participate in a roundtable conference on conservatorship reform (2014) but did not send a representative. An invitation to a voting rights conference (2014) yielded the same result. It was asked to support a voting rights reform bill (2014) but did not. To its credit, DRC promoted a voting rights reform bill the following year.

DRC has not participated in conservatorship reform outreach efforts over the last several years to the California Supreme Court, Judicial Council, and Department of Developmental Services. It has not weighed in on complaints to the United States Department of Justice under the Americans with Disabilities Act.

That was then. This is now. It is time for optimism and inclusion. There is room at the conservatorship reform table for Disability Rights California.

DRC has the legal mandate, funding, and contractual obligations that should prompt the organization to take a leadership role in advocating for access to justice for people with developmental disabilities in conservatorship proceedings.

The staff of DRC does not have to start from scratch. DRC attorneys can immerse themselves in the hundreds of documents that have been published in the past several years about the need for conservatorship reform in California.

Advocacy for conservatorship reform will continue, with or without DRC, but the chances of success will be much improved if DRC's leadership puts this matter on the organization's agenda and makes access to justice in conservatorships a priority.

Come on in. The water may be a little chilly, but as seasoned advocates for disability rights, DRC staff have plenty of experience being in uncomfortable situations. All they need to test the conservatorship waters is approval from DRC's board of directors so they can add their skills to this reform movement.

Spectrum Institute

Thomas F. Coleman is the legal director of Spectrum Institute. tomcoleman@spectruminstitute.org
Website: www.pursuitofjusticefilm.com

000001

STATE OF CALIFORNIA
STANDARD AGREEMENT
STD 213 (Rev 10/03)

AGREEMENT NUMBER
HD169001
REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME
Department of Developmental Services

CONTRACTOR'S NAME
Disability Rights California

2. The term of this Agreement is: July 1, 2016, or approved by DGS, whichever occurs later, through June 30, 2021

3. The maximum amount of this Agreement is: $31,005,995.00

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A – Scope of Work	15 page(s)
Exhibit A, Attachment 1 Regional Center Listing	3 page(s)
Exhibit B – Budget Detail and Payment Provisions	2 page(s)
Exhibit B - Attachment 1	5 page(s)
Exhibit C* – General Terms and Conditions	GTC 610
Indicate Exhibits below:	
☒ Exhibit - D Special Terms and Conditions (Attached hereto as part of this agreement)	8 page(s)
☒ Exhibit - E Consultant Services Provisions	2 page(s)
X Exhibit F - Statement of Assurances for Protected Health Information (HIPPA)	8 page(s)
X Sexual Harassment Prevention Policy	8 page(s)
X Policy Memo 423	5 page(s)

This RFP, HD169001, and the Contractor's Proposal are hereby incorporated by reference and made a part of this contract.

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.
These documents can be viewed at www.ols.dgs.ca.gov/Standard+Language

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)
Disability Rights California

BY (Authorized Signature) — DATE SIGNED (Do not type): 6-16-16
C. Blakemore

PRINTED NAME AND TITLE OF PERSON SIGNING
Catherine Blakemore, Executive Director

ADDRESS
1831 K Street
Sacramento, CA 95811

STATE OF CALIFORNIA

AGENCY NAME
Department of Developmental Services

BY (Authorized Signature) — DATE SIGNED (Do not type): 6/16/16
P. Robison

PRINTED NAME AND TITLE OF PERSON SIGNING
Pamela S. Robison, Chief, Customer Support Section

ADDRESS
1600 Ninth Street, Room 300
Sacramento, CA 95814

California Department of General Services Use Only

GTC

APPROVED
JUN 21 2016
OFFICE OF LEGAL SERVICES
DEPT OF GENERAL SERVICES

☐ Exempt per:

EXHIBIT A

SCOPE OF WORK

1. GENERAL SCOPE

A. The Contractor shall provide clients' rights advocacy services to persons with developmental disabilities who are consumers of regional centers.

B. The Contractor shall provide a clients' rights advocacy services program that meets the individual needs of consumers, is responsive to the access needs of persons with disabilities, and is culturally and linguistically appropriate to the multi-cultural diversity of the consumers, their families, and/or legal representative(s).

C. The Contractor shall meet all the statutory, regulatory, and contractual requirements encompassed by this contract. The Contractor shall provide all labor, materials, supplies, and equipment necessary to perform the obligations of this contract unless otherwise specified in the contract.

D. The Contractor agrees that this contract is for the provision of services to assert and protect the rights of persons with developmental disabilities and to ensure that laws, regulations, and policies on the rights of persons with developmental disabilities are observed. In furtherance of the goals of this contract, the Contractor further agrees that these goals can best be achieved by a cooperative effort among DDS, the regional centers and the Contractor. Accordingly, the Contractor explicitly agrees that its employees working under the terms of this contract shall use their best efforts to resolve problems through informal means.

E. The Contractor shall not use information obtained in the performance of this contract in a manner not provided for in this contract. The Contractor shall notify the Department through the DDS Project Representative of any systemic issues that are identified with any state agency.

F. DDS retains sole authority to promulgate regulations, interpret law, and set policies and procedures for clients' rights issues in the regional centers and developmental centers. On behalf of individual consumers, the Contractor may, in addition to other authorized remedies, file a complaint pursuant to Welfare and Institutions Code section 4731 about an individual regional center's application or interpretation of the laws, regulations, policies and/or procedures the Contractor is obligated to carry out under this contract.

Nothing in this section shall prohibit the Contractor from providing consumers and their families with information about their rights.

G. When authorized by a consumer, or the consumer's authorized representative, the Contractor and its clients' rights advocates may initiate and represent consumers in informal and formal fair hearings against a regional center, pursuant to Welfare and Institutions Code (W&C), Section 4700 et seq. The Contractor shall not be authorized to initiate any judicial review that extends from fair hearing proceedings conducted pursuant to WIC 4700 et seq. The Contractor shall be authorized to continue to defend a consumer in any judicial review of a fair hearing decision that is initiated by a regional center. In any case in which initiation of judicial review of an administrative decision becomes necessary, the Contractor and its clients' rights advocates may refer the case to an advocacy organization, as described in K. below, and provide to the advocacy organization such information as is authorized by the consumer, or the consumer's authorized representative.

H. When authorized by a consumer, or the consumer's authorized representative, the Contractor and its clients' rights advocates may initiate and represent consumers in any administrative appeal for generic services, including, but not limited to: Medi-Cal, In-Home Support Services, Special Education, and Social Security. Prior to initiating administrative proceedings, the Contractor shall attempt to resolve the problem informally through all practical means. However, the Contractor may initiate administrative appeal proceedings as is necessary to protect the consumer's rights, e.g., request an administrative hearing in order to protect the consumer's rights to aid-paid-pending the administrative hearing, to preserve the status quo, or to meet required filing deadlines.

I. When authorized by a consumer, or consumer's authorized representative, the Contractor and its clients' rights advocates may also initiate, or continue to defend, a consumer in any judicial review that extends from the administrative proceedings described in H. above to ensure the protection of consumers' rights. Prior to initiating judicial review proceedings, the Contractor shall attempt to resolve the problem informally and shall exhaust available administrative proceedings. However, the Contractor may initiate judicial proceedings, except those precluded in J. below, as is necessary to protect the consumer's rights, e.g., to protect the consumer's rights to aid-paid-pending; to preserve the status quo; to prevent or eliminate serious harm to a consumer; or to meet a statute of limitations deadline. Prior to initiating any judicial review of an administrative decision, the Contractor shall: (1) make reasonable efforts to secure representation from another advocacy organization and member of the private bar; and (2) ensure that it has adequate resources to initiate the action and carry out its other obligations under the contract. The Contractor shall also provide written notification to

the DDS Project Representative of any legal review proceedings entered into as part of its operations under this contract.

J. In no event shall the Contractor continue to pursue or defend any judicial action above the trial court level nor file suit or initiate litigation against DDS or its contract regional centers.

K. The Contractor shall use its best efforts to maintain referral lists of individuals and entities that perform advocacy services for consumers. The Contractor's referral list shall provide consumers with the greatest choice possible to meet the consumer's special individual, cultural, financial and linguistic needs. Referrals shall be to individuals or organizations that demonstrate the capability to provide advocacy services to individuals with developmental disabilities.

2. DEFINITIONS

A. The terms "consumer" and "client" shall be used interchangeably and shall mean any person or individual with a developmental/intellectual disability who has applied for or been found eligible for services by a regional center or who has entered the developmental disability service system by court order.

B. "Contractor," as is used in this document, is the successful bidder that is obligated to perform clients' rights advocacy services under the terms and conditions of the contract.

C. "Central Administrative Office" (CAO) is the Contractor's central clients' rights office that provides administration, coordination and monitoring of the Contractor's clients' rights advocacy and mediation services.

D. "Regional Center" (RC) refers to the twenty-one (21) private, non-profit corporations that purchase and/or coordinate an array of services for individuals with developmental disabilities who have been determined eligible to receive RC services and reside in the community.

E. "Advocacy" is defined as consultation and assistance, complaint mediation, and representation in administrative proceedings and legal actions that are permissible within the contract.

3. TOLL FREE TELEPHONE LINE

Contractor shall establish and maintain at its CAO a Toll Free/TTY/TDD 800 telephone line to accept calls from consumers requesting assistance for clients' rights advocacy services.

4. DENIAL OF RIGHTS

A. Contractor and its clients' rights advocates shall protect and assert the rights of consumers in the denial of rights process described in Title 17 California Code of Regulations Section 50530(c).

B. Contractor and its clients' rights advocates shall complete and maintain all Denial of Rights Quarterly Reports mandated in Welfare and Institutions Code Section 4504, listing consumers by an appropriate identification number or other code which will enable the Director of DDS (or designee) to identify individual treatment records, if necessary, for future analysis and investigation, and as described in Title 17 California Code of Regulations, Section 50538.

5. INVESTIGATIONS OF RIGHTS VIOLATIONS

A. Pursuant to Title 17, California Code of Regulations, Section 50540, the Contractor and its clients' rights advocates shall investigate and take action to resolve complaints from consumers, or their representatives, regarding the denial of any right to which the consumer is entitled which has been abused, punitively withheld, or improperly or unreasonably denied. Complaints shall be investigated by the clients' rights advocate and, if a violation is substantiated, a proposed resolution shall be provided to the consumer within the time lines specified in law and regulation. Outcomes of these investigations and a copy of the proposed resolution shall be forwarded to the appropriate RC Director.

B. The Contractor shall monitor complaint investigations referred to, or undertaken by, the Contractor and its clients' rights advocates to ensure that prompt and appropriate action has been taken and that the complaint has been satisfactorily resolved or appealed.

C. Upon receipt from its clients' rights advocate, the Contractor shall forward a copy of its Contractor's clients' rights advocate's proposed resolution to the DDS Project Representative.

6. EARLY START COMPLAINTS

The Contractor and its clients' rights advocates shall not investigate, but will immediately forward, all complaints filed concerning any consumer under the age of three pursuant to Part C of the Individuals with Disabilities Education Act (IDEA) to:

Department of Developmental Services
Office of Human Rights and Advocacy Services
Attention: Early Start Complaint Unit
1600 Ninth Street, Room 240, MS 2-15
Sacramento, CA 95814

7. INCIDENT REPORTS

A. The Contractor and its clients' rights advocates shall immediately report to the appropriate RC Director or designee any incident involving alleged or suspected abuse of clients' rights, neglect in treatment and care of any consumer, or physical injury or death of any consumer, unless the clients' rights advocate was informed by the RC about the incident.

B. The Contractor and its clients' rights advocates shall review any incident reports that are referred by the RC Director or designee to assure that action taken does not violate the rights of clients and shall advise the RC Director or designee of the findings of this review.

C. The Contractor and its clients rights advocates shall cooperate with protective services and licensing agencies, including Adult/Child Protective Services, the Long Term Care Ombudsman, state licensing investigators, DDS investigators, and local law enforcement, in investigations of abuse and/or neglect, as defined in Welfare and Institutions Code, Section 15600 et seq. and Penal Code, Section 11165 et seq. The Contractor and its employees, agents, and assigns are "mandatory reporters", while providing services under the terms of this contract and shall discharge their statutory duties by making such reports as described in Welfare and Institutions Code, Section 15610.17 and 15630.

8. CONSULTATION AND ASSISTANCE TO CONSUMERS AND FAMILIES

The Contractor and its clients' rights advocates shall provide, to the extent that resources are available, consultation and assistance to consumers and their families, including but not limited to, the following:

A. Act as clients' rights resource to consumers and their families, and to other interested persons or organizations in the community.

B. Initiate action on behalf of consumers who are unable to register a complaint on their own behalf.

C. Be accessible to consumers, including: visiting service providers, facilities, and residences, including evenings and weekends; attending planning conferences at the invitation of consumers, or their representatives; and participating in self-advocacy groups and conferences.

D. Provide consultation and assistance, as necessary, to consumers who are criminally charged or engaged in civil proceedings, including providing referrals for legal representation, assisting Public Defenders, and providing consultation to Public Defenders and to the court.

E. Assist consumers in obtaining and understanding local procedures for initiating fair hearings. This may include directly representing and/or referring consumers to the local area board or other advocacy organization for assistance in the Fair Hearing process.

F. Provide consultation and assistance to consumers as is necessary to obtain generic services, including SSI/SSP and other benefits to which they are entitled by law. Consultation and assistance may include, but not be limited to, completing forms, making application for services or benefits, and providing direct representation in any appeal for generic services.

G. Assert and protect the rights of consumers entering or changing their dwellings, including placement in community care and health care facilities, and judicial commitments to developmental centers.

9. CLIENTS' RIGHTS TRAINING

The Contractor and its clients' rights advocates may provide consultation and ongoing classroom training to RC employees and service providers, through new employee orientation and ongoing refresher courses, as needed to update staff on clients' rights issues, including, but not limited to: notification of rights, denials

of rights, rights of consumers who are incarcerated or facing civil or criminal charges, abuse reporting requirements and legal processes. The Contractor shall provide a copy of all training materials as an exhibit in the annual report to be submitted to the DDS Project Representative.

10. LIAISON AND MONITORING ACTIVITIES

A. The Contractor and its clients' rights advocates shall attend and participate in various clinical, administrative and staff meetings, as mutually agreed between the clients' rights advocate and the RC Director or designee, when clients' rights issues are discussed or when the clients' rights advocate is named as a participant in regulation. To ensure no conflict in representing any consumer, the contract advocate shall not serve as chair of any committee.

B. The Contractor or its clients' rights advocates shall be available to meet with the RC Director or designee, on a mutually agreeable basis, to discuss denials of rights, generic services, status of clients who are facing civil or legal charges or are in custody, and other clients' rights issues.

C. The Contractor and its clients' rights advocates shall work cooperatively with the agency responsible for providing clients' rights advocacy services at the state developmental centers and hospitals.

D. The Contractor and its clients' rights advocates shall abide by each RC's protocols/guidelines, as set forth in a Memorandum of Understanding with each RC.

11. SELF-ADVOCACY TRAINING

A. The Contractor shall provide at least two self-advocacy trainings each year of the contract for consumers and family members at locations that are convenient and accessible to individuals with developmental disabilities and their families.

B. The Contractor shall submit to the DDS copies of training materials to be included as an exhibit in the annual reports to be submitted to the DDS.

C. The Contractor shall maintain copies of training evaluations completed by self-advocacy training participants. The Contractor shall submit a random sample of the training evaluations as an exhibit in the annual reports to be submitted to the DDS.

12. GRIEVANCE PROCEDURE

A. In order to ensure that individuals with developmental disabilities have access to high quality advocacy services, the Contractor shall develop and implement a grievance procedure and appeal process regarding the quality of the Contractor's advocacy services, including, but not limited to, timeliness, accuracy, completeness of response, and quality of treatment to complainant's concerns. The Contractor shall inform all consumers in a manner designed to ensure their understanding about its grievance procedure regarding the quality of the Contractor's advocacy services.

B. The Contractor's grievance procedure shall provide three levels of appeal, the first level of which will be to the Contractor's administrative entity, the second of which will be to the Disability Rights California, Board of Directors, and the third of which will be to the DDS Project Representative. Contractor shall not exceed 15 days from the receipt of the grievance to respond to the issue at the first level nor more than 30 days to respond to the grievance at the second level, or as mutually agreed between the complainant and the Contractor. The DDS Project Representative shall respond to the complaint at the third level within 45 days of receipt of a grievance appeal, or as mutually agreed between the complainant and the DDS Project Representative.

C. The Contractor's grievance procedure will be separate from the denial of rights complaint procedure in Welfare and Institutions Code, Section 4731 *et seq.* and Title 17 California Code of Regulations Code, Section 50540, and the Fair Hearing Appeal procedure in Welfare and Institutions Code, Section 4700 *et seq.*

D. Further, the Contractor shall advise persons receiving services under the contract of the availability of other advocacy services, including the services provided by the protection and advocacy agency described in Welfare and Institutions Code, Section 4901 and the area boards.

E. The Contractor shall gather information regarding the nature and outcome of all complaints filed under the grievance procedure.

13. CONTRACTOR OPERATIONS

A. GENERAL OPERATIONS

The Contractor shall be a distinct entity independent of its parent corporation and self-sustaining regarding its services. The Contractor shall not claim any special authority or privileges other than those provided by the state laws and regulations governing the provision of clients' rights advocacy services, the

terms of this contract or any of the Memorandums of Understanding negotiated pursuant to the terms of this contract.

B. CENTRAL ADMINISTRATIVE OFFICE

The Contractor shall maintain a Central Administrative Office (CAO) within the State of California to provide administration, coordination, and monitoring of, as well as staffing for, a program of consumer rights advocacy services. The Contractor may use administrative support personnel from its parent corporation to provide administrative services such as human resources and accounting.

1. The CAO shall be appropriately staffed with administrative personnel; clients' rights advocates; and support personnel required to fulfill the contract functions and responsibilities during normal business hours.

2. The State will not provide office space, furnishings, supplies, or equipment for the CAO functions.

C. REGIONAL CENTERS CLIENTS' RIGHTS OFFICES

1. The Contractor shall establish and maintain offices convenient and accessible to the 21 RCs throughout California to provide clients' rights advocacy services.

2. The Contractor shall have at least one (1) staff member, or the functional equivalent thereof, who is assigned on a full-time basis to fulfill the duties of the clients' rights advocate providing services for individuals with developmental disabilities who are applicants for, or service recipients of, the 21 RCs.

3. The State and RC's will not be required to provide office space or furnishing equipment for the Contractor's clients' rights advocates serving the 21 RCs throughout California. However, the Contractor may negotiate with individual RCs for office space at the RC location. The Contractor shall include this agreement in the agreement developed pursuant to Exhibit A, paragraph 13, B.

D. PURCHASE OF EQUIPMENT

All equipment, material, supplies, or property of any kind purchased from funds advanced or reimbursed under the terms of this contract and not fully consumed in the work described herein shall be the property of the State. At the time of purchase of equipment under the terms hereof Contractor shall submit a list of such equipment in accordance with the instructions and format

Home Table of Contents

§ 50500. Intent and Purpose.
17 CA ADC § 50500
BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS

Barclays Official California Code of Regulations Currentness
Title 17. Public Health
Division 2. Health and Welfare Agency - Department of Developmental Services Regulations
Chapter 1. General Provisions
Subchapter 5. Clients' Rights
Article 1. Purpose and Definitions

17 CCR § 50500

§ 50500. Intent and Purpose.

The intent and purpose of this subchapter is to implement, interpret, and make specific the statutory provisions of the Lanterman Developmental Disabilities Services Act (Division 4.5 of the Welfare and Institutions Code, commencing with Section 4500) relative to the rights of persons receiving services pursuant to said Act.

Note: Authority cited: Section 11152, Government Code. Reference: Sections 4416, 4441, 4502, 4503, 4504 and 4648, Welfare and Institutions Code.

HISTORY

1. New Subchapter 5 (Articles 1-6, Sections 50500-50550, not consecutive) filed 12-23-81; effective thirtieth day thereafter (Register 81, No. 52).

2. Editorial redesignation of former Chapter 4 (Subchapters 5 and 6, Sections 50500-50667, not consecutive) to Chapter 1, Subchapters 5 and 6 (Sections 50500-50667, not consecutive) filed 9-28-83 (Register 83, No. 40).

This database is current through 4/16/21 Register 2021, No. 16

17 CCR § 50500, 17 CA ADC § 50500

END OF DOCUMENT

§ 50510. Application of This Subchapter.

17 CA ADC § 50510
BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS

Barclays Official California Code of Regulations Currentness
Title 17. Public Health
Division 2. Health and Welfare Agency - Department of Developmental Services Regulations
Chapter 1. General Provisions
Subchapter 5. Clients' Rights
Article 2. Rights of Persons with Developmental Disabilities

17 CCR § 50510

§ 50510. Application of This Subchapter.

Each person with a developmental disability, as defined by this subchapter, is entitled to the same rights, protections, and responsibilities as all other persons under the laws and Constitution of the State of California, and under the laws and the Constitution of the United States. Unless otherwise restricted by law, these rights may be exercised at will by any person with a developmental disability. These rights include, but are not limited to, the following:

(a) Access Rights.

(1) A right to treatment and habilitation services. Treatment and habilitation services shall foster the developmental potential of the person. Such services shall protect the personal liberty of the individual and shall be provided under conditions which are the least restrictive necessary to achieve the purposes of treatment.

(2) A right to dignity, privacy, and humane care.

(3) A right to participate in an appropriate program of publicly-supported education, regardless of the degree of handicap.

(4) A right to religious freedom and practice, including the right to attend services or to refuse attendance, to participate in worship or not to participate in worship.

(5) A right to prompt and appropriate medical care and treatment.

(6) A right to social interaction and participation in community activities.

(7) A right to physical exercise and recreational opportunities.

(8) A right to be free from harm, including unnecessary physical restraint, or isolation, excessive medication, abuse or neglect. Medication shall not be used as punishment, for convenience of staff, as a substitute for program, or in quantities that interfere with the treatment program.

(9) A right to be free from hazardous procedures.

(10) A right to advocacy services, as provided by law, to protect and assert the civil, legal, and service rights to which any person with a developmental disability is entitled.

(11) 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.

(12) A right of access to the courts for purposes including, but not limited to the following:

(A) To protect or assert any right to which any person with a developmental disability is entitled;

(B) To question a treatment decision affecting such rights, once the administrative remedies provided by law, if any, have been exhausted;

(C) To inquire into the terms and conditions of placement in any community care or health facility, or state hospital, by way of a writ of habeas corpus, and

(D) To contest a guardianship or conservatorship, its terms, and/or the individual or entity appointed as guardian or conservator.

(b) Personal Rights. Each person with a developmental disability who has been admitted or committed to a state hospital, community care facility, or health facility shall have rights which include, but are not limited to, the following:

(1) To keep and be allowed to spend one's own money for personal and incidental needs.

(2) To keep and wear one's own clothing.

(3) To keep and use one's own personal possessions, including toilet articles.

(4) To have access to individual storage space for one's private use.

(5) To see visitors each day.

(6) To have reasonable access to telephones, both to make and receive confidential calls, and to have calls made for one upon request.

(7) To mail and receive unopened correspondence and to have ready access to letter-writing materials, including sufficient postage in the form of United States postal stamps.

(8) To refuse electroconvulsive therapy ("ECT").

(9) To refuse behavior modification techniques which cause pain or trauma.

(10) To refuse psychosurgery. Psychosurgery means those operations currently referred to as lobotomy, psychiatric surgery, and behavioral surgery and all other forms of brain surgery if the surgery is performed for any of the following purposes:

(A) Modification or control of thoughts, feelings, actions, or behavior rather than treatment of a known and diagnosed physical disease of the brain.

(B) Modification of normal brain function or normal brain tissue in order to control thoughts, feelings, actions, or behavior.

(C) Treatment of abnormal brain function or abnormal brain tissue in order to modify thoughts, feelings, actions, or behavior when the abnormality is not an established cause for those thought, feelings, actions, or behavior.

(11) Other rights as specified by administrative regulations of any federal, state, or local agency.

(c) Rights of State Hospital Residents. In addition to all of the other rights provided for in this subchapter, each person with a developmental disability who resides in a state hospital shall be accorded the following rights:

(1) If involuntarily detained, to have access to a current and up-to-date copy of the California Welfare and Institutions Code. This right includes the right to have assistance from the Clients' Rights Advocate in the reading and understanding of the Code.

(2) To give or withhold consent for treatments and procedures, in the absence of a judicial order or other provision of law which provides for the exercise of this right to devolve to another party.

(3) To be provided with the amount of funds specified in Welfare and Institutions Code Section 4473 for personal and incidental use if, following the initial thirty (30) days of state hospital residency, the person is not receiving an amount of income for such use which is equal to or greater than the amount authorized by Section 4473.

Note: Authority cited: Section 11152, Government Code. Reference: Sections 4423, 4473, 4503 and 4504, Welfare and Institutions Code.

This database is current through 4/16/21 Register 2021, No. 16

17 CCR § 50510, 17 CA ADC § 50510

Home Table of Contents

§ 50540. Complaint Procedure.
17 CA ADC § 50540
BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS

Barclays Official California Code of Regulations Currentness
Title 17. Public Health
Division 2. Health and Welfare Agency - Department of Developmental Services Regulations
Chapter 1. General Provisions
Subchapter 5. Clients' Rights
Article 5. Complaint Procedure

17 CCR § 50540

§ 50540. Complaint Procedure.

(a) Each client or any representative acting on behalf of any client, who believes that any right to which the client is entitled has been abused, punitively withheld, or improperly or unreasonably denied, may pursue a complaint as provided in this section.

(b) Initial referral of any complaint taken pursuant to this section shall be to the clients' rights advocate responsible for the facility in which such person is a resident or of which such person is a client.
Except for state hospitals, the responsible clients' rights advocate shall be the person assigned such duties by the regional center within whose service catchment area the facility is geographically located.

The clients' rights advocate shall, within ten working days of receiving a complaint, investigate the complaint and send a written proposed resolution to the complainant.

(c) If the complainant expresses dissatisfaction with the action taken or proposed by the clients' rights advocate, the complaint shall be referred, by the clients' rights advocate, within five (5) working days, to the director of the state hospital or of the regional center in whose service catchment area the facility is located.

(d) If the complaint is not resolved to the satisfaction of the complainant within ten (10) working days by the director of the state hospital or regional center, it shall be referred by that director to the Department of Developmental Services' clients' rights officer, whose responsibility it shall be to make a recommendation to the director of the State Department of Developmental Services for final administrative decision.

THOMSON REUTERS
WESTLAW

California Code of Regulations

Home Table of Contents

§ 50501. Definitions.

17 CA ADC § 50501
BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS

Barclays Official California Code of Regulations Currentness
Title 17. Public Health
Division 2. Health and Welfare Agency - Department of Developmental Services Regulations
Chapter 1. General Provisions
Subchapter 5. Clients' Rights
Article 1. Purpose and Definitions

17 CCR § 50501

§ 50501. Definitions.

(a) As used in this subchapter the following words and phrases have the specified meaning:

(1) Client. "Client" means any person with a developmental disability who is receiving services, is an applicant for services, or has been referred for services pursuant to the Lanterman Developmental Disabilities Services Act.

(2) Clients' rights advocate. "Clients' rights advocate" means the individual or individuals assigned by a regional center or state hospital to be responsible for clients' rights assurance for persons with developmental disabilities.

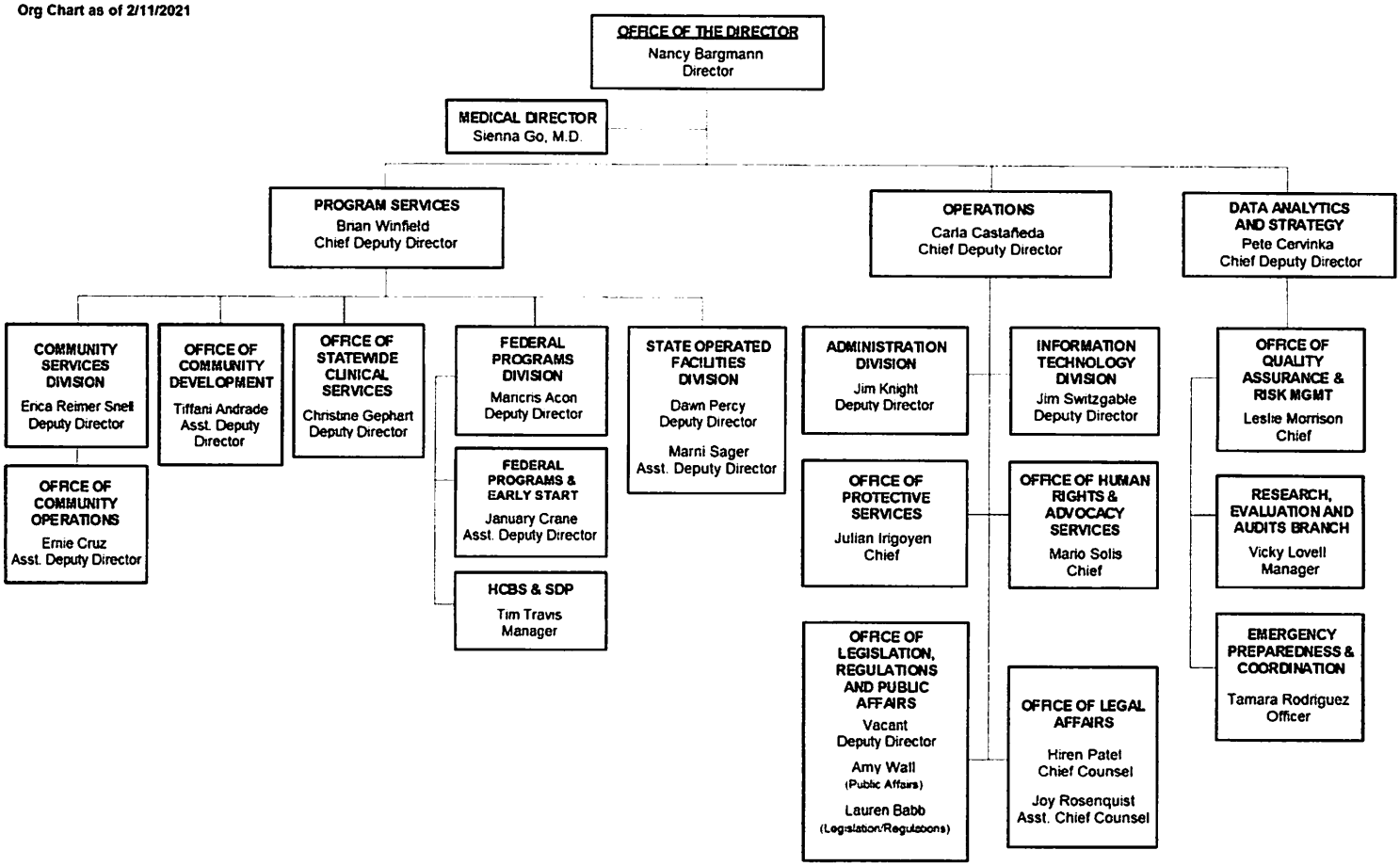
(3) Clients' Rights Assurance. "Clients' Rights Assurance" refers to the comprehensive program of ensuring that the civil, legal and service rights of persons with developmental disabilities are available and guaranteed to such persons.

(4) Clients' Rights Officer. "Clients' Rights Officer" is the person assigned by the director to implement the department's clients' rights assurance endeavors on a statewide basis and to provide technical assistance and functional supervision to the network of clients' rights advocates throughout California.

(5) Community care facility. "Community care facility" means any licensed facility defined in Health and Safety Code Section 1502.

(6) Department. "Department" means the State Department of Developmental Services.

Department of Developmental Services
Org Chart as of 2/11/2021



Department of Fair Employment and Housing

Appeal to the Director

To: Director Kevin Kish

From: Spectrum Institute by Thomas F. Coleman

Re: Appeal from Administrative Decision
DFEH Number: 201808-03296020

Date: November 26, 2018

Appeal

On November 20, 2018, the Department of Fair Employment and Housing sent a notice to Thomas F. Coleman indicating that it "has declined your request for DFEH to open a director's investigation into alleged discrimination by a State-operated, funded, or financially-assisted entity and has closed your case . . . ." The notice specified that the case was closed for the following reason(s): "DFEH will not exercise its discretion under Cal. Code Regs., tit. 2, § 10012 to open a director's investigation."

On November 21, 2018, Thomas F. Coleman, on behalf of Spectrum Institute, sent a notice of appeal via email to the email address specified in the case closure letter. That notice explained that information regarding the basis for the appeal would be sent to the department in the coming days.

Cal. Code Regs., tit. 2, § 10033 states that "any person who wishes to appeal the department's decision to reject a complaint or close a case may appeal to the director. . . ." This is an appeal to the director. The section further states that the appeal shall specify "the grounds upon which the appealing party considers the department's determination to be unjust . . . ." Spectrum Institute, through its representative Thomas F. Coleman, considers the closure of the case without an investigation to be unjust. The reasons are explained below.

Procedural History

On August 16, 2018, Thomas F. Coleman filed a complaint with the Superior Court of the State of California for the County of Sacramento on behalf of Spectrum Institute and The Arc of California. The complaint alleged that the superior court was violating the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and Government Code Section 11135 by failing to appoint attorneys for a significant number of adults with intellectual or developmental disabilities who are required to participate as litigants in probate conservatorship proceedings. A second complaint was filed on behalf of Spectrum Institute and California Advocates for Nursing Home Reform for the failure to appoint attorneys for a significant number of adults with cognitive disabilities that are age related or due to medical illnesses or accidents.

Both complaints alleged that without the appointment of an attorney, these litigants had to represent

themselves pro per and, as a result of the severity of their disabilities they were not afforded effective communication and meaningful participation in the conservatorship proceedings. It was further alleged that the superior court knew of the severity of their disabilities, knew or should have known that they would prevent effective communication and meaningful participation, had a duty as a public entity receiving state and federal funds to remedy this problem, but systematically and willfully failed to take remedial action to cure this problem.

On August 16, 2018, Thomas F. Coleman on behalf of Spectrum Institute, sent a letter to Mr. Kevin Kish, director of DFEH, alerting him to the complaints filed with the superior court. Accompanying the letter were two pre-complaint inquiries for alleged violations of Section 11135 by the superior court. One inquiry focused on alleged violations of the rights of proposed conservatees with intellectual and developmental disabilities. The other focused on proposed conservatees with other types of cognitive disabilities. Both inquiries stated: "This precomplaint inquiry should be construed as a referral to the director for the purpose of him initiating a director's investigation . . . ." All materials that had been sent to the superior court were also included with the letter to Mr. Kish.

On September 4, 2018, Thomas F. Coleman was contacted by Mr. Narbeh Vartanian, an intake consultant with DFEH. Two days later, an extensive phone interview of Mr. Coleman was conducted by Mr. Vartanian. DFEH was advised that all materials supporting the request for an investigation were available online at: http://spectruminstitute.org/Sacramento/

Additional written materials were submitted by email to Mr. Vartanian on: September 6, September 7, October 17, October 19, November 15, November 16, November 18, November 19, and November 20. Mr. Vartanian later indicated that all of those communications and materials were uploaded to the case file.

On October 16, 2018, the Court Executive Officer of the Sacramento Superior Court sent a letter to Mr. Coleman in response to the complaint that had been filed with the court. The letter stated that the court is in compliance with relevant sections of the probate code relating to appointment of counsel and "has detected no systemic deficiencies" in that regard. The court does not believe that state or federal disability discrimination laws require appointment of counsel in all conservatorship proceedings.

Finally, the letter states that "determining whether an individual has meaningful access to the court system requires an individualized analysis." However, what is missing from the letter is any explanation of whether the court is engaging in such an analysis in each of those cases in which an attorney is not appointed. That omission from the letter is very telling. There is nothing to indicate that the court does engage in such an individualized analysis in any probate conservatorship proceeding. An investigation by DFEH would likely confirm that in the significant number of cases in which no attorney is appointed, the court has not engaged in any analysis or evaluation of the litigant's ability to have effective communication or meaningful participation in the proceeding without an attorney.

On November 20, 2018, Mr. Vartanian sent a "Notice of Intake Form Closure" to Thomas F. Coleman via email and postal mail. The following day, a notice of appeal was sent to the Appeals Unit via email with a copy also being sent to Mr. Vartanian.

Factual Background

The problem addressed in the precomplaint inquiries was first brought to the attention of Thomas F. Coleman, legal director of Spectrum Institute, in what might be called a "whistle blower" report. A letter from a representative of Alta California Regional Center was sent to Mr. Coleman on March 17, 2017. It disclosed that many regional center clients were not receiving court-appointed attorneys in probate conservatorship proceedings and were therefore being required to represent themselves in these proceedings. It was alleged that the Sacramento County Superior Court was among the courts that were failing to appoint attorneys for these involuntary litigants. (See: http://spectruminstitute.org/Sacramento/04-exhibit-a.pdf)

Subsequently, the whistle blower explained the nature and magnitude of the problem in a documentary film titled *Pursuit of Justice*. Her statements occur at 6:30 minutes into the 35-minute film. (See: http://pursuitofjusticefilm.com/)

This information eventually caused Mr. Coleman to review online court records in a sample of probate conservatorship cases processed through the Sacramento County Superior Court. This audit revealed that in a significant number of general conservatorship cases, the court did not appoint an attorney to represent the proposed conservatees. As a result, many litigants had to represent themselves. (See: http://spectruminstitute.org/Sacramento/05-exhibit-b.pdf)

Mr. Coleman then consulted a variety of professionals asking them to render an opinion on the ability of adults with serious cognitive and communication disabilities to effectively represent themselves in probate conservatorship proceedings. These professionals included a clinical psychologist, an elder law attorney, an ADA compliance specialist, and a former regional center employee. These professionals concluded that most proposed conservatees would not be able to have effective communication or meaningful participation in these proceedings without a court-appointed attorney. (http://spectruminstitute.org/Sacramento/02-declarations.pdf)

Based on the whistle blower report, the audit of a sample of cases, and the opinions of the professionals, complaints were filed with the superior court and the precomplaint inquiries and referral were sent to Director Kish.

The Problem

The Sacramento County Superior Court receives petitions asking the court to grant an order placing an adult into a conservatorship due to serious cognitive and other disabilities that prevent the adult from making major life decisions and therefore place the health and welfare of the adult at risk. The court then issues a citation that requires the adult in question to participate in the conservatorship proceeding as a respondent. A verified petition, supporting documents, and medical capacity declaration put the court on notice of the nature and severity of the cognitive and other disabilities of the proposed conservatee. As a result, from the very beginning of the case, the court has knowledge of the nature, severity, and effects of these disabilities.

For adults with developmental disabilities, petitioners have the option of filing a petition for general conservatorship or a petition for limited conservatorship. Limited conservatorship proceedings are only allowed for adults with developmental disabilities. In limited conservatorship proceedings, the

court must appoint an attorney to represent the proposed limited conservatee. Some petitioners choose to file for a general conservatorship, perhaps due to counseling or coaching by others, and as a result they bypass the requirement that counsel be appointed. This has the effect of expediting the proceeding and removing potential obstacles to the granting of an order of conservatorship – obstacles that an appointed attorney may raise. A significant number of proposed conservatees who have developmental disabilities do not receive an appointed attorney as a result of the filing choice of the petitioners and as a result of the court failing to appoint an attorney on its own motion.

For adults with other cognitive and communication disabilities, petitioners can only file for a general conservatorship. A restrictive reading of relevant sections of the probate code suggest that appointment of counsel for proposed conservatees in general conservatorship proceedings is not mandatory. However, the probate code does not reference state and federal disability nondiscrimination statutes that require courts to take pro-active measures to ensure that litigants with significant disabilities have access to justice in these proceedings. Neither the ADA or corresponding state statutes are on the court's "radar screen" as these cases are being processed. ADA coordinators of the courts are focused on mobility disabilities and providing sign language interpreters for people who are deaf or hard of hearing. ADA assessments are not being done for proposed conservatees to determine what supports and services may be needed to ensure effective communication and meaningful participation in the conservatorship proceeding.

The court appoints attorneys to represent some proposed conservatees but not others. The court has no judicial policy for determining which ones receive attorneys and which do not – except for compliance with state laws requiring appointment of counsel in limited conservatorship proceedings or in a general conservatorship case when dementia powers are being requested.

A significant number of proposed conservatees with developmental disabilities who are respondents in general conservatorship proceedings do not receive an appointed attorney. The same is true for adults with other types of cognitive and communication disabilities. When no attorney is appointed, the court does not order an evaluation or conduct an assessment of the ability of the pro per respondent to have effective communication or meaningful participation in the proceeding. The response of the superior court to the ADA complaint indicates that the court is aware that such individualized assessments are contemplated by state and federal law. An investigation by DFEH would reveal that such assessments are not being conducted by the court. According to the opinions of the professionals who were consulted on the matter, without an attorney these litigants will not have meaningful access to justice in these cases.

The application of the access to justice protections of the ADA, Section 504, and Section 11135 to proposed conservatees is a matter of first impression in California. Washington State has established precedents from which California can learn. Court rules there acknowledge that appointment of an attorney may be a necessary ADA accommodation. Administrative rules in that state require the appointment of an advocate if it appears necessary to secure meaningful participation in administrative hearings. DFEH should interpret Section 11135 in a similar manner.

Duties of the Court

Title II of the ADA applies to services offered by public entities. State and local courts are considered public entities with ADA obligations. Section 504 of the Rehabilitation Act of 1973

contains protections for people with disabilities similar to the ADA. These protections apply to public entities receiving federal funds. Government Code Section 11135 incorporates Title II of the ADA into state law. That section applies to state funded entities, programs, and services.

The Sacramento County Superior Court is subject to the requirements of the ADA, Section 504, and Section 11135. The response of the superior court to the ADA complaint indicates that the court does not contest the applicability of these state and federal laws to the court or to conservatorship proceedings.

Although Rule 1.100 of the California Rules of Court addresses the duties of the court to provide accommodations upon request, the rule is silent as to the sua sponte duties of the court under the ADA, Section 504, and Section 11135. Title II of the ADA does not require a recipient of or participant in government services to request an accommodation or modification. A public entity has a duty to accommodate the special needs of people with known disabilities. An entity, such as a court, can acquire knowledge of a disability in a variety of ways. One way is when a request for accommodation is made. Another is when a third party informs the court that a litigant has a disability that may impair participation in a legal proceeding. Yet another is when the court learns this through pleadings or other court documents, such as a petition, medical capacity declaration, or various reports.

Once a court learns that a litigant has significant disabilities that may impair effective communication in the proceeding or interfere with his or her ability to understand or have meaningful participation in the proceeding, the court must initiate an interactive process or an ADA accommodation assessment. One way to satisfy the court's sua sponte duties under the ADA, Section 504, and Section 11135 would be to appoint an attorney for the litigant. The attorney would have an obligation to assist the litigant in understanding the proceeding and having access to available court procedures, such as ascertaining the wishes of the client, reading and evaluating the petitioner's paperwork, communicating with the capacity assessment professional, seeking appointment of other professionals, vetting the proposed conservator, investigating facts, calling witnesses, cross-examining petitioner's witnesses, filing motions, making objections, filing a notice of appeal, etc. A proposed conservatee without disabilities could perform these functions without an attorney. A proposed conservatee with significant cognitive and communication disabilities could not. The court knows this. And yet, when the court fails to appoint an attorney, it does not conduct an individualized assessment of the ability of the litigant to have meaningful participation in the proceedings. This failure is the nub of the problem and upon which the violations of state and federal disability nondiscrimination laws are based.

The superior court is aware of the nature and severity of the disabilities of the proposed conservatees who are required to represent themselves. The court is aware of its ADA obligations. But despite this knowledge, the court is not taking corrective action. Such action would require either appointing and attorney or conducting an individualized assessment showing that appointed counsel is not necessary to ensure effective communication and meaningful participation.

Authority of DFEH

DFEH has the authority to investigate alleged violations of Section 11135, including those which are based on the failure of a state-funded entity to comply with Title II of the ADA.

The director has broad authority to open an investigation into systemic deficiencies that may be violating the rights of a class of individuals.

A complaint to DFEH or a referral to the department requesting a director's investigation should not have to include evidence sufficient to meet a preponderance of evidence standard. In a case such as this, the referral is being made by an organization that operates through the volunteer efforts of its project directors and advisors. This referral is the result of hundreds of hours of research, investigation, and reporting. The evidence submitted, and the legal authorities cited, should be sufficient to warrant the opening of an investigation. The department has the resources to develop the evidence further, through written inquiries to or requests for records from the superior court.

Such an investigation should not be fact intensive. Most of the matters alleged in the referral and precomplaint inquiry will not be disputed by the court. The litigants who are not provided attorneys have significant disabilities. The disabilities interfere with their ability to have effective communication and meaningful participation in the proceedings. The court is aware of these disabilities. The court is or should be aware of the adverse impact of these disabilities on access to justice in these cases. The court does not appoint an attorney for many proposed conservatees. When no attorney is appointed, the court does not evaluate the ability of the litigant to effectively represent himself or herself in the proceeding. No ADA assessment is done. None of these facts will be disputed by the court.

Unjust Decision

The decision of DFEH not to open a director's investigation and to close the case is unjust. The injustice stems from several factors.

The severity of the disabilities of proposed conservatees makes most of them unable to request an attorney. They do not understand the need for an attorney. Many do not even understand the nature of the proceeding, much less the value of an attorney in such a case. But a request should not be required. The ADA contemplates the duty of a public entity to provide accommodations for known disabilities, even without a request. But when an entity ignores this obligation, it is unjust to require the litigant to file an appeal or lodge a complaint. Again, most of them would not know how to engage in such procedures.

Proposed conservatees are not organized as a political lobby or legal advocacy network. They are unlike other constituencies which have the ability to complain and to petition the government for redress of grievances – women, the LGBT community, racial minorities, and people with physical disabilities. People with cognitive disabilities mostly depend on others to lobby or complain for them. That is why Spectrum Institute, The Arc of California, and CANHR filed the complaints with the superior court. That is why Spectrum Institute filed the precomplaint inquiries and referral to DFEH for a director's investigation.

All other administrative remedies have been explored and pursued, but without avail. DFEH is the last resort by which these classes of people with disabilities can secure relief. An investigation by DFEH could stimulate systemic reform – not only in Sacramento but in courts throughout the state where there is a similar failure to appoint counsel or conduct an individualized ADA assessment of the ability of those without counsel to have access to justice is conservatorship proceedings.

Spectrum Institute has approached the following officials and agencies, through administrative requests, seeking reform of the conservatorship system, including a requirement that competent counsel be appointed to provide effective advocacy and defense services for proposed conservatees: Chief Justice of California, Judicial Council, State Bar, Attorney General, California Senate Judiciary Committee, United States Department of Justice, Los Angeles Superior Court, and the Sacramento Superior Court.

While the Attorney General has the duty to see that laws of the state are properly enforced, that office has a conflict of interest that has prevented its Civil Rights Enforcement Section from becoming involved. Since the Attorney General provides legal advice to state officials and entities, including state courts, the loyalty of that office is aligned with the alleged civil rights violators. As a result, that leaves DFEH as the only civil rights enforcement agency with jurisdiction to intervene on behalf of these two classes of proposed conservatees.

The jurisdiction of DFEH to investigate ADA violations by state-funded entities is relatively new. DFEH supported the bill that created this jurisdiction even though no funding was provided for this expanded authority. DFEH indicated that it did not anticipate a flood of complaints under Section 11135 and therefore existing funding was sufficient to fulfill this new responsibility.

It is likely that there has not been a flood of complaints under section 11135. It is also likely that this may be the first complaint against a superior court for alleged ADA violations. So now that DFEH has the jurisdiction that it sought or supported, it would be unjust for the department to decide that it will not exercise its discretion to assist these vulnerable classes of litigants with disabilities obtain access to justice in legal proceedings they never sought to be a part of in the first place.

The director and the department have evaluated the equities and decided to investigate and advocate for people with disabilities in significant cases in the past. One example is the director's investigation and subsequent litigation against the Law School Admissions Council.

Since there are virtually never any appeals to the Court of Appeal or Supreme Court filed by probate conservatees, due to the nature of their disabilities and lack of effective legal representation, the problem identified here will not be corrected through the normal appellate process. It is therefore necessary to seek intervention by DFEH – the only agency in the Executive Branch with authority to investigate and, if necessary, conciliate or litigate a solution to this problem.

It would therefore be proper and just to reverse the decision to summarily close this case and to open a director's investigation of the matters identified in the precomplaint inquiries and referral.

Some additional comments are warranted regarding the closure of the case insofar as it pertains to the violation of the rights of people with intellectual and developmental disabilities who are involved in probate conservatorship proceedings.

The Legislature has declared: "The State of California accepts its responsibility to ensure and uphold the rights of persons with developmental disabilities and an obligation to ensure that laws, regulations, and policies on the rights of persons with developmental disabilities are observed and protected." (Cal. Welf. & Inst. Code § 4433) It has further been declared: "An otherwise qualified person by reason of having a developmental disability shall not be excluded from participation in,

be denied benefits of, or be subjected to discrimination under any program or activity that receives public funds." (Cal. Welf. & Inst. Code § 4502)

These rights are parallel to and enforceable through Government Code Section 11135. It is patently unjust for DFEH to be made aware of violations of these code sections by the Sacramento County Superior Court and then not to open an investigation to determine the scope of the problem and to fashion an appropriate remedy. To close the case without a director's investigation would be to shirk the responsibility entrusted to DFEH by the Legislature.

Section 4433 speaks of a duty to ensure that laws, *regulations*, and policies on the rights of persons with developmental disabilities are observed and protected. The California Code of Regulations (17 CCR § 50510) specifically addresses the right of such persons to "advocacy services" and "access to the courts" to contest a guardianship or conservatorship. (See attached commentary: "Access to the Courts for People with Developmental Disabilities."

By failing to appoint an attorney for a significant number of proposed conservatees with developmental disabilities in probate conservatorship proceedings, the Superior Court is denying them the rights specified in this regulation.

To ensure access to justice in these proceedings, the Superior Court should do either of the following: (1) appoint an attorney who will serve as an advocate and ensure access to justice in the proceeding; or (2) conduct an individualized assessment of the proposed conservatee to determine whether he or she will be able to effectively advocate and have meaningful participation in the proceeding without an appointed attorney.

An investigation by DFEH will show that in a significant number of probate conservatorship cases, the Superior Court is doing neither. This failure constitutes a violation of due process, Title II of the ADA, Section 504 of the Rehabilitation Act, Section 11135 of the Government Code, Section 4502 of the Welfare and Institutions Code, and Section 50510 of the California Code of Regulations. Since all of these sections are restatements of the rights guaranteed in and duties imposed on the court by Section 11135, DFEH has jurisdiction to open a director's investigation into the policies and practices of the Superior Court. Failure to do so would be unjust. As a result, the decision to close the case should be reversed and a director's investigation should be opened.

The failure to have an attorney to assist a proposed conservatee is not a technicality that can or should be ignored because petitioners have good intentions. The consequences of an order of conservatorship can be devastating. Being placed under an order of conservatorship has been likened to "civil death" due to the loss of fundamental decision-making rights in the areas of medical care, place of residence, control of finances, social contacts, sexual relations, marriage, and education.

The National Council on Disability issued a report earlier this year in which it recognized the severe consequences an order of guardianship (conservatorship) can have on the rights of an American. (https://ncd.gov/newsroom/2018/federal-report-examines-guardianships) Appointment of counsel was listed among the various due process procedural protections that NCD recommended should be included in any adult guardianship proceeding.

A press release issued with the report stated: "Former Congressman Claude Pepper famously said

of guardianships, 'The typical [person subject to guardianship] has fewer rights than the typical convicted felon… It is, in one short sentence, the most punitive civil penalty that can be levied against an American citizen, with the exception, of course, of the death penalty,'" said Phoebe Ball, NCD Legislative Affairs Specialist who worked extensively on the report. "NCD chose to examine this topic at depth given the implications for someone's civil rights and liberty under guardianship – that an individual is losing the authority to make decisions regarding where to live, whether to work and where, where to travel, with whom to socialize, and how to manage money and property. We need to explore alternatives to guardianship such as supported decision making that enable people to avoid this civil death."

Without an attorney, the serious disabilities of a proposed conservatee will prevent him or her from effectively utilizing the procedural protections afforded to such litigants under state law – protections that can help reduce the risk of placing his or her life under the control of someone who has been or may be abusive. People with developmental disabilities, for example, are at much higher risk of abuse than people in the generic population. The abuse often occurs at the hands of relatives, household members, or care providers – people who may be associated with a petitioner or proposed conservator. (http://disabilityandabuse.org/survey/index.htm) A competent attorney who performs his or her function effectively can play a crucial role in vetting a proposed conservator and thereby reducing the risk of abuse. (http://spectruminstitute.org/publications/trauma-informed-justice.pdf)

Without an attorney, it is unlikely that anyone will contest the matter if less restrictive alternatives, such as supported decision-making arrangements, have not been seriously explored and considered. A competent attorney can make sure that petitioners have not just checked the less restrictive alternative box on a form but in fact have truly explored options such as supported decision-making. (http://spectruminstitute.org/ipp-by-pvp.pdf)

Appointment of an attorney for a proposed conservatee is not a mere formality. Such an attorney, if he or she is doing a proper job, will engage in advocacy and defense activities during a conservatorship proceeding that are crucial to not only a fair process but to increasing the likelihood of a just result. (http://spectruminstitute.org/pvp/strategic-guide.pdf) That is why the failure of the Sacramento Superior Court to appoint attorneys for a significant number of people with serious disabilities is so egregious. That is also why a director's investigation should be opened by DFEH.

November 26, 2018

Respectfully submitted:

Thomas F. Coleman
Legal Director
Spectrum Institute

555 S. Sunrise Way, Suite 205
Palm Springs, CA 92264
(818) 230-5156

Access to the Courts for People with Developmental Disabilities

California Statutes and Regulations

People with developmental disabilities, like everyone else, have a right of "access to the courts." This right is specifically recognized and emphasized in the California Code of Regulations. (17 CCR § 50510) This regulation implements the statement of rights contained in Welfare and Institutions Code Section 4502. That statute affirms the right of people with such disabilities to full participation in any program or activity that receives public funds. Courts receive public funds.

Legal proceedings are an activity of the courts. Full participation in a legal proceeding would include the right to examine and evaluate pleadings, offer objections, make motions, produce evidence, challenge evidence, call witnesses, cross-examine witnesses, and file an appeal.

People with serious cognitive and communication disabilities are denied access to the courts and full participation in conservatorship proceedings when their disabilities prevent them from performing these activities. Appointment of counsel, therefore, would be required to ensure that they have meaningful participation in the proceedings. The rights of such litigants under this statute and this regulation are coextensive with their "equal access" rights under the Americans with Disabilities Act and Government Code Section 11135.

Relevant portions of Section 50510 appear below:

"Each person with a developmental disability . . . is entitled to the same rights, protections, and responsibilities as all other persons under the laws and Constitution of the State of California and the Constitution of the United States. . . These rights include, but are not limited to the following:

"(A) Access Rights . . .

> (10) A right to advocacy services, as provided by law, to protect and assert the civil, legal, and service rights to which any person with a developmental disability is entitled.
>
> (12) A right of access to the courts for purposes including, but not limited to the following:
>
> > (D) To contest a guardianship or conservatorship, its terms, and/or the individual or entity appointed as guardian or conservator."

In interpreting and enforcing Section 11135 and relevant provisions of the ADA, as these legal protections would apply to people with developmental disabilities who are involved in conservatorship proceedings, the Department of Fair Employment and Housing should do so in a manner that recognizes and protects the equal access rights of such persons under Section 4502 and Section 50510. (Cf. *Payne v. Superior Court*, 17 Cal. 3d 908 (Cal. 1976))

Thomas F. Coleman
Spectrum Institute
November 20, 2018

The State Can Intervene When Counties Fund ADA-Noncompliant Legal Services Programs

By Thomas F. Coleman

All California counties receive funds from the state to operate legal services programs providing lawyers to respondents in limited conservatorship cases. If a program does not comply with the Americans with Disabilities Act, the entity using state funds to operate or finance the program is violating California Government Code Section 11135 because this law incorporates Title II of the ADA.

Title II requires public entities to provide people with disabilities meaningful access to services. ADA-compliant advocacy services require performance standards and training programs for appointed attorneys and a system of monitoring performance. The County of Los Angeles is not doing any of this. It pays for substandard services the same as it pays for effective services. No questions asked.

The Department of Fair Employment and Housing (DFEH) has jurisdiction to enforce Section 11135. It therefore can investigate complaints for Title II violations by a county and, if warranted, can negotiate a settlement or file a lawsuit in state or federal court. The director may also initiate an investigation on his or her own motion and file a lawsuit for systemic violations affecting a protected class.

DFEH has not yet been presented with evidence of systematic ADA violations by the court-appointed attorney program for limited conservatorships funded by the County of Los Angeles. Spectrum Institute filed an informal ADA complaint with the county but later withdrew it when the county failed to follow its own procedures for such complaints.

If the Board of Supervisors were to restructure the legal services program to make sure that attorneys for limited conservatorship respondents are complying with the ADA, the problem of systemic and ongoing violations of Title II and Section 11135 would be moot.

◇◇◇

Thomas F. Coleman is the legal director of Spectrum Institute. He may be reached at: tomcoleman@spectruminstitute.org.

Government Code Section 11135

(a) No person in the State of California shall, on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state. Notwithstanding Section 11000, this section applies to the California State University.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) The protected bases referenced in this section have the same meanings as those terms are defined in Section 12926.

(d) The protected bases used in this section include a perception that a person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

ROB BONTA

Attorney General

Search

This webpage should contain a disclaimer that the Attorney General will not enforce civil rights laws or help victims of discrimination when the perpetrators of such violations are state agencies, departments, or officials. Attempts by various organizations over the years to enlist the Department of Justice to investigate civil rights violations against conservatees and proposed conservatees by judicial officers, court employees, and court-appointed attorneys, or even to convene a forum to address this problem, have resulted in no action whatsoever.

Civil Rights

Home / *Civil Rights*

The Civil Rights Enforcement Section is committed to the strong and vigorous enforcement of federal and state civil rights laws. The Section addresses a broad array of civil rights issues, including, but not limited to:

- Discrimination by business establishments, including discrimination on the basis of race, color, religion, sex, ancestry, national origin, disability, medical condition, genetic information, sexual orientation, citizenship, primary language, immigration status, and other protected classifications

- Disability Access Rights
- Employment and Housing Discrimination
- Reproductive Rights
- Education Rights, including Equal Access to Higher Education
- Sexual Assault on College Campuses
- Immigrant Rights, including Combating Immigration Consultant Fraud
- Hate Crimes
- Human Trafficking Prevention under the California Transparency in Supply Chains Act
- Police Practices, including the Investigation of Police Misconduct
- Children's Rights
- Voting Rights
- The Protection of Free Speech
- Workers' Rights

Civil rights issues are also the focus of two specialized branches of the Civil Rights Enforcement Section. The Bureau of Children's Justice, formed by Attorney General Kamala D. Harris in February 2015, employs a broad array of tools to protect the rights of children and focus the attention and resources of law enforcement and policymakers on the importance of safeguarding every child so that they can meet their full potential.

The Attorney General's Underground Economy Unit works to protect California workers' rights, legitimate businesses and taxpayers by prosecuting violations of California's labor laws, such as theft of wages; unpaid overtime; misclassification of employees as independent contractors; payroll tax fraud and evasion; workers' compensation insurance premium fraud; serious safety violations and the illegal avoidance of workers' compensation coverage for employees.

The Civil Rights Enforcement Section takes a proactive role in identifying civil rights violations to be remedied by the Attorney General. It also works closely with the public, state, federal and local government agencies, and civil rights and community organizations to identify potential civil rights initiatives. When civil rights violations are confirmed, the Civil Rights Enforcement Section

will represent the Attorney General in his independent capacity as California's chief law officer in prosecuting those who have violated the law, and will seek the strongest remedies to prevent further violations of those laws.

The Civil Rights Enforcement Section provides legal representation to state agencies that are charged with enforcing specific California civil rights laws. The Section provides advice and consultation services to these agencies and represents them before state and federal trial and appellate courts. These agencies include, but are not limited to, the Department of Fair Employment and Housing, which is responsible for enforcing the California Fair Employment and Housing Act, and the Native American Heritage Commission, which is charged with enforcing the Native American Heritage Act that protects Native American burial and sacred sites.

The Civil Rights Enforcement Section also prepares and files friend-of-the-court briefs (called amicus curiae briefs) on behalf of the Attorney General and on behalf of client agencies in cases brought by third parties in which significant civil rights issues will be resolved.

Additionally, the Civil Rights Enforcement Section educates the public about California and federal civil rights laws to ensure that the public is aware of their rights and remedies under those laws. The Section engages in outreach to the civil rights community and the public to gather information to assist the Section in identifying appropriate subjects for investigation and/or litigation.

The Civil Rights Enforcement Section also provides proposals and advice to the Attorney General on potential civil rights legislation.

Civil Rights Enforcement

Civil Rights Home

Disability & Abuse Project

2100 Sawtelle, Suite 204, Los Angeles, CA 90025 • (818) 230-5156
www.disabilityandabuse.org • nora-baladerian@verizon.net

May 23, 2014

Hon. Kamala Harris
Attorney General of California
P.O. Box 944255
Sacramento, CA 94244-2550

Re: Request for Oversight and Intervention

Dear Attorney General:

I am writing to request that you exercise the authority and perform the duty specified by Article V, Section 13 of the California Constitution. That provision declares: "It shall be the duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced."

As you will see from information contained in the enclosed report, constitutional obligations and statutory mandates pertaining to limited conservatorships are not being uniformly and adequately enforced in Los Angeles County. These deficiencies are adversely affecting the rights of people with developmental disabilities, as individuals and as a class of vulnerable adults without effective advocacy.

Unfortunately, when the Legislature established a legal system and procedures for the establishment and maintenance of limited conservatorships some 30 years ago, it did not designate an agency of the Executive Branch of government to monitor this system. As a result, the system is operated wholly within the Judicial Branch. The systemic and operational deficiencies identified in our report, *Justice Denied*, indicate that the judiciary is not monitoring itself and that quality assurance procedures either do not exist or are not effective.

Our Project has done its own "mini-audit" of this system as it is operated by the Los Angeles Superior Court. Our preliminary findings caused us to convene a conference on May 9, 2014, and another is scheduled for June 20. A copy of our preliminary report, *Justice Denied*, was sent to all members of the Judicial Council. We are also reaching out to the chairs of the judiciary committees of each house of the Legislature.

We do not know how limited conservatorships are processed in other counties, but if what is happening in the largest Superior Court in the state is any indication, there is a major statewide deprivation of justice that is happening to a very vulnerable population – one that is unable to adequately advocate for itself. If Los Angeles County is unique, then thousands of people with disabilities in that jurisdiction are being deprived of equal protection of the law (in addition to violations of other constitutional and civil rights).

Our Project is calling on you, as chief law enforcement officer of the State of California, to investigate this matter and to take appropriate steps to ensure that the Judicial Branch corrects these deficiencies, remedies past injustices, and moves forward in a manner that uniformly and adequately enforces all constitutional and statutory provisions relating to the establishment and maintenance of limited conservatorships.

Our Project is eager to meet with your staff to discuss the important matters addressed in *Justice Denied*.

Very truly yours,

Thomas F. Coleman

THOMAS F. COLEMAN
Legal Director
(818) 482-4485 / tomcoleman@earthlink.net

Disability and Guardianship Project
Disability and Abuse Project

9420 Reseda Blvd. #240, Northridge, CA 91324
(818) 230-5156 • www.spectruminstitute.org

January 20, 2017

Honorable Xavier Becerra
Attorney General
300 S. Spring Street
Los Angeles, CA 90013

Re: The Role of the Attorney General in Protecting the Civil Rights of People with Intellectual and Developmental Disabilities

Dear Attorney General Becerra:

I am writing to you in anticipation of a favorable Senate vote next week so that my letter reaches your desk by the time you assume the duties of California's Attorney General. As you may know, Article V, Section 13 declares: "It shall be the duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced." Those laws include constitutional and statutory provisions protecting the civil rights of people with intellectual and developmental disabilities.

For the past few years, I have focused my attention on what I call the "limited conservatorship system" in California – policies and practices that assess the capacities of adults with developmental disabilities and restrict the civil liberties of such adults to the extent that probate judges deem it appropriate. After extensive research into all aspects of this system, I have concluded that judges, court-appointed attorneys, and others involved in the limited conservatorship system have been systematically violating the rights of tens of thousands of Californians with disabilities who become involved in these proceedings. Violations of the Americans with Disabilities Act are routine. Materials I have published on this subject are found at: http://spectruminstitute.org/library/

Spectrum Institute has reached out to many elected officials about this problem. Among those we have contacted are: the Chief Justice of California, the Judicial Council of California, the State Bar of California, the Senate Judiciary Committee, and the Department of Developmental Services.

The Office of the Attorney General can play an important role in protecting the constitutional and statutory civil rights – both federal and state – of people with disabilities in limited conservatorship proceedings. We invite the Civil Rights Enforcement Section to work with us toward that end.

Respectfully submitted:

Thomas F. Coleman
Legal Director, Spectrum Institute
tomcoleman@spectruminstitute.org

cc: Ms. Angela Sierra
Senior Assistant Attorney General

Disability and Guardianship Project
Disability and Abuse Project
1717 E. Vista Chino – A7-667 – Palm Springs, CA 92262
(818) 230-5156 • www.spectruminstitute.org

April 26, 2018

Hon. Xavier Becerra
Candidate for Attorney General
777 S. Figueroa Street, Suite 4050
Los Angeles, CA 90017

Re: Protecting the civil rights of seniors and people with disabilities in probate conservatorships

Dear Candidate Becerra:

We are writing to both major contenders for the office of California Attorney General. We have the same message and the same request for each candidate.

The message: Tens of thousands of seniors and people with disabilities who find themselves entangled in probate conservatorship proceedings are victims of civil rights violations. Judges often ignore the Americans with Disabilities Act in these cases, sometimes not even appointing an attorney to defend the rights of a respondent. Court-appointed attorneys are often surrendering, rather than defending, the rights of their clients. Court investigators all too often are not monitoring these cases adequately or they are not effectively responding to reports of abuse. Capacity assessments are often not performed at all with respect to many areas of decision-making, and when they are done, they are conducted by individuals who lack the necessary qualifications or training for such an evaluation.

The request: We sent out a request to the Attorney General in 2014, asking for an investigation or some involvement to deal with these civil rights violations. There was no response and no action. We sent out a request to the nominee for Attorney General in 2017 with a similar request. We have never been invited to have a face-to-face meeting with anyone at the Department of Justice. We have been told there is nothing the Attorney General can do because the loyalty of the office is aligned with the state agencies and officials who are allowing these civil rights violations to occur. We are asking each candidate if he will: (1) convene a civil rights summit on probate conservatorships to address these issues on a statewide basis; and (2) following the summit to convene a Civil Rights Task Force on Probate Conservatorships to identify the prevalence of civil rights violations in such proceedings, to determine the extent to which these violations stem from systemic deficiencies in policies and practices; and to identify ways to better protect the civil rights of persons involved in such proceedings.

Will you meet with us to discuss our request?

Respectfully submitted:

Thomas F. Coleman
Spectrum Institute

Attachments: 2014 Letter to Kamala Harris / 2017 Letter to Xavier Becerra

TASH

Equity, Opportunity, and Inclusion for People with Disabilities since 1975

May 24, 2018

777 S. Figueroa Street, Suite 4050
Los Angeles, CA 90017

RE: Attorney General's Civil Rights Task Force on Probate Conservatorships

Hon. Xavier Becerra:

We are writing to indicate the support of the international organization, TASH, for the suggestion made by Spectrum Institute that the California Attorney General convene a Civil Rights Summit on Probate Conservatorships, with follow up research and reporting conducted by the Attorney General's Civil Rights Task Force on Probate Conservatorships.

TASH is an international leader in disability advocacy. Founded in 1975, TASH advocates for human rights and inclusion for people with significant disabilities and support needs – those most vulnerable to segregation, abuse, neglect and institutionalization. TASH has been a leader in disability advocacy for 40 years

TASH is aware of and supports the advocacy efforts of Spectrum Institute for guardianship and conservatorship reform in California and nationally. Spectrum Institute has engaged in extensive research, education, and advocacy efforts to reform state guardianship / conservatorship systems to ensure they provide access to justice and due process to people with disabilities, and consider less restrictive alternatives to guardianship.

We believe that by sponsoring a Civil Rights Summit and convening a Civil Rights Task Force, the California Attorney General will provide the leadership necessary to correct systemic deficiencies in the conservatorship system, deficiencies that exist in both policy and practice, and offer legislative and administrative solutions to better protect the rights of people with disabilities.

Sincerely,

Ruthie-Marie Beckwith

Ruthie-Marie Beckwith
Executive Director

1875 I Street NW, Suite 582 • Washington, DC 20006
Phone: 202-429-2080 • Fax: 202-540-9019 • Email: info@tash.org • Website: www.tash.org

Spectrum Institute -- Disability and Guardianship Project

From: Tom Coleman - Spectrum Institute <tomcoleman@spectruminstitute.org>
Sent: Sunday, January 14, 2018 1:55 PM
To: 'Satoshi Yanai'
Subject: Awaiting response from Xavier Becerra
Attachments: daily-journal-guest-column.pdf; front-page.JPG

Hello Satoshi,

I hope this message finds you well. Happy New Year!

It is hard to believe but it has been one year since Spectrum Institute reached out to our new Attorney General asking him to conduct a civil rights investigation of the conservatorship system in California.

Soon after our initial letter was sent, we submitted documents to the Civil Rights Section to show how people with disabilities were being denied access to justice in conservatorship proceedings.

I am sorry to report that nothing much has changed in the past year – despite our best efforts at education and advocacy at the state and local levels of government and with state and local bar associations.

The recent case of Theresa Jankowski is an example of how court-appointed attorneys are actively advocating against their clients in these proceedings. It came to my attention about two weeks ago. I was so upset by it that I decided to write a commentary and submit it to the Daily Journal legal newspaper. Apparently the editors there felt like I did. They placed it on the front page of the paper last Friday.

Please bring this article to the attention of your supervisors, including Attorney General Becerra. I hope you were able to share with others in your office the rough cut of the video I recently sent you a link to. We are nearing completion of the film and hope to release it nationally in a month or so.

We are eagerly awaiting a response from Mr. Becerra as to whether the Attorney General's Office will open a formal inquiry into the civil rights violations we have brought to his attention through the Civil Rights Section of the California Department of Justice.

Tom Coleman
Spectrum Institute

Spectrum Institute -- Disability and Guardianship Project

From:	Tom Coleman - Spectrum Institute <tomcoleman@spectruminstitute.org>
Sent:	Saturday, April 7, 2018 3:34 PM
To:	'Michael.Newman@doj.ca.gov'
Cc:	'Nora Baladerian'
Subject:	May 2014 -- April 2018 / Continuing outreach to the Attorney General on civil rights violations in conservatorship proceedings
Attachments:	kamala-harris.pdf; becerra-letter.pdf; yanai-letter.pdf; Awaiting response from Xavier Becerra; Response to letter from Ms. Yanai Satoshi at California DOJ

Michael,

I am responding to the email your sent today to Dr. Nora Baladerian.

She and I work very closely together on the projects of Spectrum Institute. She heads up the Disability and Abuse Project and I head up the Disability and Guardianship Project. Our work overlaps.

Nora has asked me to take the lead on current and future communications with the Attorney General's Office concerning conservatorship issues.

When I initially reached out to Kamala Harris in 2014, the matter was referred to the Civil Rights Enforcement Section for review. I had communications with you at that time.

I reached out to Xavier Becerra in January 2017. The matter was again referred to the Civil Rights Enforcement Section. I then had communications with Yanai Satoshi.

The problems we have identified continue to exist. We are hope the civil rights of people with disabilities will be given proper attention by the Attorney General. The fact that you are now reaching out to us and to others is a good indication that your office is looking deeper into these issues.

Please let me know if you would be available at 11am on Monday. Nora and I are both available then. If you are not, then please suggest a few other times on that day or other days next week that would work.

We appreciate the fact that someone of your experience and caliber has been assigned to this task. I noted your name on the complaint in the DACA case – right there with the Attorney General on the signature line. Obviously, you are highly respected and valued by the Department of Justice. So we are pleased that you are the one who is working with Angela Sierra on this matter.

Tom Coleman
(818) 482-4485

p.s. I am attaching letters and emails and documents that show our continuing attempts to get the Attorney General to investigate the ongoing and egregious violations of the civil rights of conservatees and proposed conservatees in California. These attachments should make it easier for you to understand the history of our interactions with the Attorney General's Office over the past four years.

Spectrum Institute -- Disability and Guardianship Project

Attachments: becerra-letter-2.pdf

From: Tom Coleman - Spectrum Institute [mailto:tomcoleman@spectruminstitute.org]
Sent: Thursday, April 26, 2018 10:49 AM
To: 'kelli.evans@doj.ca.gov' <kelli.evans@doj.ca.gov>
Subject: Civil rights violations of vulnerable adults in California -- will the AG show that he cares?

Kelli Evans
Special Assistant Attorney General
Oakland, California

Dear Kelli,

Today I saw this announcement from the Attorney General: *"Kelli will serve as a legal and policy advisor on criminal justice reform, public safety policy, and civil rights."*

Congratulations on your new position (well . . . one year old) with the Attorney General.

I was in communication with you when you were at the State Bar. The issue now is the same as it was then – systemic and ongoing violations of the civil rights of people with disabilities who are caught up in conservatorship proceedings.

Perhaps you have seen our new documentary film – *Pursuit of Justice*. If not, it can be found at **http://pursuitofjusticefilm.com/** The film chronicles our efforts to stop these civil rights abuses and to reform the conservatorship system in California and the guardianship systems in other states throughout the nation.

Unfortunately, our pleas to Kamala Harris and Xavier Becerra have gotten us nowhere – except recently we got some clarity that the AG stands with the state actors who are responsible for operating the system that is violating state and federal civil rights laws in these proceedings.

So I have come up with an idea to suggest. Surely the AG can put a spotlight on these problems even if he won't sue the officials who are perpetuating them. A conference. A Task Force. A report documenting the problems and recommending ways to better protect the civil rights of seniors and people with disabilities in these proceedings.

Below is a posting today on the "what's new" page of our website. I am in the process of reaching out to disability rights advocates and organizations in California to alert them to our request.

Perhaps you will watch the film and in the process experience the seriousness of the problems and the passion we have for reform, and then inform Mr. Becerra of our desire to meet with him.

Thanks for considering this request.

Tom Coleman
Legal Director
Spectrum Institute

April 26, 2018

Letters Sent to Candidates for California Attorney General

In May 2014, we sent a letter to the California Attorney General Kamala Harris reporting civil rights violations in the limited conservatorship system and asking for her, as chief law enforcement officer of the state, to take corrective action. No reply. In January 2017, we wrote a letter to the Attorney General nominee Xavier Becerra, asking him to open an investigation into these civil rights abuses once his nomination was confirmed. After delays and avoidance, we were told the AG's hands were tied because his office represents the officials who allow or participate in these civil rights violations.

Today, we are writing to Dave Jones (above) and Xavier Becerra (left) -- the two major candidates for the office of California Attorney General in the November election. We are asking the winner of the election to sponsor a Civil Rights Summit on Probate Guardianships and to convene a Civil Rights Task Force on Probate Guardianships to study systemic civil rights problems in the conservatorship system and to make recommendations on how the state can better protect the rights of seniors and people with disabilities who become involved in these proceedings.

Spectrum Institute -- Disability and Guardianship Project

From:	Spectrum Institute -- Disability and Guardianship Project <tomcoleman@spectruminstitute.org>
Sent:	Sunday, June 2, 2019 6:37 AM
To:	'Angela Sierra'
Cc:	'Michael.Newman@doj.ca.gov'
Subject:	Following up on requests to the Attorney General
Attachments:	142-michigan-task-force.pdf

Ms. Angela Sierra
Civil Rights Enforcement Section
California Department of Justice

Dear Ms. Sierra,

In January 2017, Spectrum Institute wrote to Attorney General Xavier Becerra asking him to investigate the broken probate conservatorship system in California. http://disabilityandabuse.org/becerra-letter.pdf

In May 2018, a number of organizations sent similar letters to the Attorney General. http://disabilityandabuse.org/tash-letters.pdf / http://www.disabilityandabuse.org/Becerra.pdf / http://www.disabilityandabuse.org/arc-letter-to-becerra.pdf

Despite having a Civil Rights Enforcement Section, so far the California Department of Justice seems to have taken no action to address this area of concern. Local problems in the probate conservatorship process have been identified in Alameda County (http://spectruminstitute.org/path/) and in Sacramento (http://spectruminstitute.org/Sacramento/). Problems in Los Angeles have been the subject of complaints to the United States Department of Justice. (http://spectruminstitute.org/doj/) The complaints filed with the DOJ in June 2015 are still under review.

We are bringing to your attention an initiative recently sponsored by the Attorney General of Michigan, in cooperation with the Michigan Supreme Court and other officials, to address similar problems in that state. (See attached press release.) We encourage the Attorney General of California to acknowledge the problems we have been bringing to his attention and to take formal actions to address them.

As the chief law enforcement officer of the state, the Attorney General has a constitutional duty to ensure that the laws of the state, as well as state and federal constitutional mandates,

are faithfully executed. Sadly, when it comes to the probate conservatorship system in California, that is not happening. Local judges, court-appointed attorneys, and others involved in probate conservatorship proceedings, are doing whatever they want. The system has no checks and balances and participants in the process have no accountability.

We look forward to learning what Attorney General Becerra will do to address these issues.

Very truly yours,

Thomas F. Coleman
Legal Director
Spectrum Institute