



## **Disability and Guardianship Project Disability and Abuse Project**

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January 27, 2017

Hon. Dennis M. Perluss  
Presiding Justice – Division Seven  
Second District Court of Appeal  
303 S. Spring Street  
Los Angeles, CA 90013

Re: Request for Permission to File Amicus Curiae Brief in Parisio v. County (B262108)

Dear Justice Perluss:

Spectrum Institute is a nonprofit organization promoting freedom from abuse and access to justice for people with intellectual and developmental disabilities, including and especially those who are under the protection of the probate courts in limited conservatorship proceedings. Michael J. Parisio Jr. (aka Mickey) was one of more than 43,000 such adults in California at the time allegations of abuse against Mickey were investigated by Adult Protective Services in 2012.

As legal director of Spectrum Institute, I have not only studied Mickey's limited conservatorship case, but I have conducted extensive research into the policies and practices of the limited conservatorship system in California, investigating how it has affected the rights of tens of thousands of adults with intellectual and developmental disabilities. I have written more than 200 articles, letters, and reports about these policies and practices. A compendium of these documents is found on the website of Spectrum Institute. (<http://spectruminstitute.org/library/>)

I was prepared to attend oral argument in this case as an observer – until I became aware of the Court's request that counsel for the parties address how this case may be affected by the Protective Placements and Custody of Endangered Adults Act. (Referred to below as "Chapter 12") I am concerned that the parties may not adequately brief this issue, especially because the parties will be viewing this issue from their own narrow interests. Respondent likely will view the matter from a bureaucratic and financial perspective. Appellant's interest is monetary. Neither party represents the interests of the class of individuals whose rights may be affected by the opinion of this Court – especially if the Court were to publish it in the official reports.

That the Court even posed the question about Chapter 12 is evidence that the Court is thinking outside of the conceptual box framed by the parties. The Court has appropriately expanded the parameters of the box, but not nearly enough. On behalf of the class of limited conservatees who at some point may be victims of dependent adult abuse – whether it is perpetrated by their conservators or by others – Spectrum Institute is asking the Court to expand the conceptual box even further. We are suggesting that the Court should ask the parties to address the relevance of three other sections of the Welfare and Institutions Code, several sections of the Probate Code, and the California Rules of Court to the analysis of this appeal.

As advocates for the class of limited conservatees whose rights may be affected by the opinion of this Court, we suggest that the procedures contained in Chapter 12 do not apply when an alleged victim of dependent adult abuse is under an order of conservatorship and thus under the ongoing protection of the probate court. If granted permission to file a formal amicus curiae brief, Spectrum Institute would explain that position more thoroughly.

The legislative findings contained in Chapter 12 clearly indicate that the Legislature was “providing a mechanism . . . when no other means are available to mitigate the risk to the elderly or dependent adult” who is an alleged victim of abuse. While there may have been a need in 1996 – the year this legislation was enacted – for additional procedural protections for dependent adults who were not in conservatorships, there were already existing protections for those, such as Mickey, who were limited conservatees. The sections cited in the attached pages are evidence of ample existing procedural protections – not only for conserved victims, but for conservators who are alleged to be perpetrators. The probate court had, and continues to have, broad investigative powers and plenary authority to provide relief to victims of abuse who are limited conservatees.

In this case, the APS worker and deputy sheriff went to the home, investigated, and found what they considered to be sufficient evidence to warrant temporary removal – with or without consent of the conservators. The APS worker notified the probate court of the circumstances. The court directed its investigator to look into the matter and file a report with the court. The court appointed an attorney to represent Mickey. The conservators were notified by the court and were represented in the conservatorship proceeding by the same attorney who is representing them in this civil case and this appeal. (A request for judicial notice of relevant minute orders would be filed along with any formal brief.) The procedures contemplated by the relevant sections of the Probate Code, Welfare and Institutions Code, and Rules of Court were followed. What effect this conclusion would have on the outcome of this appeal is beyond the scope of concern of Spectrum Institute. However, the conclusion and reasoning supporting it are matters the Court should consider in its deliberations.

We respectfully submit that the matters raised in this request, and the authorities cited in the attached pages, are of sufficient relevance that the Court should consider asking the parties to file supplemental briefs on the issues we have raised and postpone oral argument until such time that the court is able to review these issues. The content of oral argument may be significantly different if these issues are addressed in any supplemental briefs that are filed.

As a matter of judicial efficiency, the Court may want to consider this letter as an amicus brief. If not, we request that the Court grant Spectrum Institute permission to file a formal brief. Spectrum Institute would be a true friend of the court, as it would not be advocating for or against the judgment of the court below or for or against the interests of either party. We merely want the Court to consider the interests of the class of limited conservatees before it files an opinion in this case.

Respectfully submitted:



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## **Statutory Rules of Construction**

### **Duty to Harmonize Conflicting Statutes**

“ ‘A court must, where reasonably possible, harmonize statutes, reconcile seeming inconsistencies in them, and construe them to give force and effect to all of their provisions. [Citations.] This rule applies although one of the statutes involved deals generally with a subject and another relates specifically to particular aspects of the subject.’ [Citation.] Thus, when “ ‘two codes are to be construed, they ‘must be regarded as blending into each other and forming a single statute .’ [Citation.] Accordingly, they ‘must be read together and so construed as to give effect, when possible, to all the provisions thereof.’ [Citation.]” [Citation.] Further, “ “[a]ll presumptions are against a repeal by implication. [Citations.]” [Citation.] Absent an express declaration of legislative intent, we will find an implied repeal ‘only when there is no rational basis for harmonizing the two potentially conflicting statutes [citation], and the statutes are “irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation.’ “ “ “ “ (Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles (2012) 55 Cal.4th 783, 805 (Pacific Palisades ); see Chavez v. City of Los Angeles (2010) 47 Cal.4th 970, 986.)

### **Specific Statutes Takes Precedence Over General Statute**

“If conflicting statutes cannot be reconciled, later enactments supersede earlier ones [citation], and more specific provisions take precedence over more general ones [citation].” (Collection Bureau of San Jose v. Rumsey (2000) 24 Cal.4th 301, 310 (Rumsey ).) But when these two rules are in conflict, the rule that specific provisions take precedence over more general ones trumps the rule that later-enacted statutes have precedence. (See People v. Gilbert (1969) 1 Cal.3d 475, 479 [“ ‘It is the general rule that where the general statute standing alone would include the same matter as the special act, and thus conflict with it, the special act will be considered as an exception to the general statute whether it was passed before or after such general enactment.’ “]; see Nunes Turfgrass, Inc. v. Vaughan–Jacklin Seed Co. (1988) 200 Cal.App.3d 1518, 1539 [same]; see also Code Civ. Proc., § 1859 [“when a general and particular provision are inconsistent, the latter is paramount to the former”] .)

**Statutes and Rules of Court Relevant to Proceedings  
in Response to Allegations of Abuse by a Conservator  
Against a Dependent Adult with Developmental Disabilities**

**Probate Code**

Division 4. Guardianship, Conservatorship, and Other Protective Proceedings

Section 2100. “Guardianships and conservatorships are governed by Division 3 . . . except to the extent otherwise expressly provided by statute, and by this division.” [Note: Division 3 involves “General Provisions of a Procedural Nature.”]

Section 1850.5. “(a) Notwithstanding Section 1850, each limited conservatorship for a developmentally disabled adult, as defined in subdivision (d) of Section 1801, shall be reviewed by the court one year after the appointment of the conservator and biennially thereafter.

“(b) The court may, on its own motion or upon request by any interested person, take appropriate action, including but not limited to, ordering a review of the limited conservatorship, including at a noticed hearing, at any time.”

Section 1424. “‘Interested person’ includes, but is not limited to: (a) Any interested state, local, or federal agency. (b) Any interested public officer or employee of this state or of a local public entity or of the federal government.”

Section 1431. “‘Proceeding to establish a limited conservatorship shall include proceedings to modify or revoke the powers or duties of a limited conservator.’”

Section 2650. “A guardian or conservator may be removed for any of the following causes: . . . (c) Continued failure to perform duties or incapacity to perform duties suitably. . . (j) In any other case in which the court in its discretion determines the removal is in the best interests of the ward or conservatee. . . .”

Section 1001. “(a) The Judicial Council may provide by rule for the practice and procedure under this code.”

## Welfare and Institutions Code

Section 15657.3. “The department of the superior court having jurisdiction over probate conservatorships shall also have concurrent jurisdiction over civil actions and proceedings involving a claim for relief arising out of . . . the abuse of an elderly or dependent adult, if a conservator has been appointed for the plaintiff prior to the initiation of the action for abuse.”

Section 15633.5. “(a) Information relevant to the incident of elder or dependent adult abuse may be given to . . . the probate court . . . .”

Section 15640. “(a)(1) An adult protective services agency shall immediately, or as soon as practically possible, report by telephone to the law enforcement agency having jurisdiction over the case any known or suspected instance of criminal activity and to any public agency given responsibility for investigation in that jurisdiction of cases of elder and dependent adult abuse, every known or suspected instance of abuse . . . .” [Note: The probate court is a public entity with responsibility to investigate cases of alleged dependent adult abuse involving conservatees.]

## Chapter 12. Protective Placements and Custody of Endangered Adults

Section 15700. . . . “(b) It is the intent of the Legislature, in enacting this chapter, to enhance the protection of elderly persons and dependent adults **by providing a mechanism** for temporary emergency protective custody of elderly or dependent adults who are suspected victims of abuse or neglect, and who are found to be in a situation that poses an immediate risk of serious injury or death, and **when no other means are available to mitigate the risk to the elderly or dependent adult.**” [Note: Emphasis is added by placing certain language in bold. When this Chapter was enacted in 1996, there were other means available for investigating and remedying alleged abuse of dependent adults who were in conservatorships and thus were under the protection of the probate court. Those proceedings are contained in sections of the Probate Code (above) and in other sections of the Welfare and Institutions Code (above). Thus, it appears that Chapter 12 was intended for dependent adults who were not under an order of conservatorship at the time the abuse allegedly occurred.]

## California Rules of Court

Rule 7.10. “(1) Notwithstanding (b)(2), a judicial officer or court staff may receive an ex parte communication concerning an open proceeding under the Probate Code or an open LPS conservatorship proceeding for the limited purpose of ascertaining whether it is a communication described in (b) or a communication described in (c)(2).

“(2) Subject to the requirements of (c)(3), a judicial officer may consider an ex parte communication from a person about a fiduciary's performance of his or her duties and responsibilities or regarding a conservatee or ward in an open proceeding under the Probate Code or an open LPS conservatorship proceeding. The court may decline to take further action on the communication, with or without replying to the person or returning any written communication received from the person. The court may also take appropriate action, consistent with due process and California law, including one or any combination of the following:

(A) Review the court file and take any action that is supported by the record, including ordering a status report or accounting if it appears that a status report or accounting should have been filed by a fiduciary but is delinquent.

(B) Refer the communication to a court investigator for further action, and receive, consider, and respond to any report from the investigator concerning it;

(C) If the communication discloses possible criminal activity, refer the matter to the appropriate law enforcement agency or prosecutor's office;

(D) If the communication discloses conduct that might subject a person or organization to disciplinary action on a license, refer the matter to the appropriate licensing agency;

(E) If the communication discloses possible elder or dependent adult abuse, or child abuse, refer the matter to appropriate state or local governmental agencies, including adult protective or child protective service departments;

and

(F) Set a hearing regarding the communication, compel the fiduciary's attendance, and require a response from the fiduciary concerning the issues raised by the communication.”