

A Common Scenario of Assembly Line Justice in Limited Conservatorship Proceedings

by Thomas C. Coleman

Nancy, who has autism, is about to turn 18 years of age. Her parents are advised by the Regional Center that they should think about initiating a conservatorship proceeding.

The parents know nothing about the law and, having a low-income household, cannot afford to hire an attorney. They hear about a self-help clinic operated by Bet Tzedek Legal Services.

The parents call Bet Tzedek and schedule a spot for them in a clinic where 25 families will fill out forms in a group setting. They are told to bring certain basic information with them.

The parents attend the clinic even though they have received no instruction about the rights of conservatees or the duties of conservators. They have not attended any educational seminars about conservatorship and what it means. They have not consulted with a lawyer.

At the clinic, the parents view a slide show that shows them the boxes on the forms that are typically checked off by petitioners such as themselves. They go through the forms, page by page, checking off the boxes and filling in the blanks with the required information.

If they have legal questions about the ramifications of what they are declaring in these forms, there is no one to answer them. Bet Tzedek staff and volunteers cannot give legal advice.

The parents check off a box stating that Nancy “is unable to complete an affidavit of voter registration.” Nancy cannot read, can barely write her name, and has a low-normal IQ, so they cannot imagine her completing such a form on her own.

Attached to the court forms is a page that asks the court to give them all “seven powers” and to remove those rights from Nancy. The parents sign the forms and give them to the clinic staff who will then file it for the parents with the court.

A few weeks later, the court appoints an attorney to represent Nancy in the limited conservatorship proceedings. The attorney was selected from a list of Probate Volunteer Panel (PVP) lawyers who have signed up to handle such cases.

The attorney has no special skill or training about the dynamics of autism, or how it affects the thought processes or emotions of people who experience that condition. The attorney attended a three-hour seminar on one occasion during which he listened to a few judges and attorneys who talked about the limited conservatorship process.

At the seminar, the attorney was told that the law was unclear about what his role should be. Should he advocate for what the client wants or should he advocate for what he personally believes is best for the client? He will have to decide that for himself.

“If you don’t agree with what your client wants, then tell the court what she wants, then explain why you think that is wrong and say what you think is best,” a judge at the seminar explained. “Put both perspectives in your report to the court.”

The attorney remembers that another judge explained that if the attorney believes that the client cannot fill out an affidavit for voter registration on her own, then the attorney must say so in his report to the court. “A parent cannot fill out the form for the adult child,” the judge advised.

The attorney knows nothing about federal voting

rights laws and has never been educated about the Americans with Disabilities Act and its application to legal proceedings.

The attorney was also advised at the seminar that he will be acting as a substitute for a court investigator. Although the law contemplates that a court investigator interview the proposed conservatee and family members and evaluate her capacities to make decisions and to vote, due to budget and staff cuts, an investigator will not be involved. So the attorney will be acting as a de-facto court investigator. "Put everything in your report that an investigator would have put in his report," the seminar advised.

The attorney knows that his time on the case is limited. Because of budget cuts, the court requires attorneys to spend less than 10 hours on a case, including time in court, without prior approval.

The attorney goes to the home to interview the parents. Because Nancy is mostly non-verbal, the attorney says very little to her directly. She is present when the attorney interviews the parents so she gets the drift of what is happening by overhearing that conversation.

The attorney does not go to Nancy's school, nor does he talk to the coach of the soccer team on which Nancy plays. He does read a report prepared by the Regional Center.

That report recommends that the parents be given five of the seven powers, but that she retain her right to make decisions regarding marriage, sexual contacts, and social relationships. The attorney notes, but basically ignores the recommendation since he knows the Regional Center almost always makes such a recommendation as a matter of principle.

Although he has not asked the court for a psychologist to be appointed to evaluate Nancy's capacities in any of these areas, the attorney concludes that it is better if her parents are given all seven powers.

The attorney files a report with the court. The report is a public document. If he does not oppose any of

the parents' requests as indicated in their petition, then the petition will be unopposed and will be routinely granted by the court.

The attorney's report is typical of other PVP reports. He checks off the voting box on the form that he knows will result in the court entering an order disqualifying Nancy from voting. He checks off boxes next to all seven powers asking the court to grant the parents the authority in all of those areas and to remove those rights from Nancy.

Nancy and the parents appear in court. The judge is polite and asks her to speak. She is mostly silent. No one has filed a form with the court to advise the court that she needs Assistive Communication Technology in order to communicate her thoughts to others. So Nancy nods her head and says hello and nothing of substance is said.

No one has asked Nancy how she feels about losing her right to make her own decisions about which relatives she visits, or which friends she hangs out with. Nancy despises her grandfather who she feels gets too physical with her on occasion and says things that make her feel bad. As a child, she was forced to spend several weekends a year with her grandparents. Now that she is an adult, she would prefer not to go to the grandparents home anymore.

No one asks Nancy about whether she has a boyfriend and whether she wants to be able to decide for herself whether or when to kiss him or become intimate with him. No one asks her about her knowledge of birth control or other methods of protection from sexually transmitted diseases.

After the "hearing," the judge enters an order that gives the parents all seven powers. The parents can now require Nancy to spend weekends with the grandparents. She does not have the right to say no. The judge also enters an order disqualifying Nancy from voting.

The case is "closed" and the attorney is dismissed. Three days later, the attorney is contacted by the court to take a new case. The scenario begins again.