A Presentation on Self-Help Clinics Reinforces the Need for *Major* Reform of the Limited Conservatorship System

by Thomas F. Coleman

I attended a presentation at the Beverly Hills Bar Association on March 31, 2014. The Speaker was Josh Passman of Bet Tzedek Legal Services. The presentation described the operations of their Self-Help Conservatorship Clinic.

Before the presentation began, I was able to converse with Josh about some basic facts concerning what I call the Limited Conservatorship System, about Bet Tzedek, and about the Self-Help Clinic.

Bet Tzedek helps parents or family members to file the necessary paperwork to obtain a limited conservatorship for their adult child who has a developmental disability. This is done through the organization's Self Help Legal Clinic.

With the help of Bet Tzedek, about 1,000 such petitions are filed each year with the Los Angeles County Superior Court. Since some petitions are filed without help from the Clinic – by people with attorneys and people who just do it on their own – it seems safe to conclude that at least 1,200 new petitions for limited conservatorship are filed with the court each year with or without the Clinic.

The Self Help Legal Clinic operates under a contract with the court. Some of its funding comes through a grant from the Equal Access Fund of the State Bar Association of California. Bet Tzedek received a grant of $85,000 in 2013.

Parents find out about the Clinic from a variety of sources: Regional Centers, other parents, online searches, etc. Clinics are operated three mornings a week at the downtown courthouse and one day a week in three branch courts. Walk-in clients are assisted on an individual basis.

The Clinic has a group workshop at the Bet Tzedek headquarters two afternoons a month. Parents are given advance appointments to attend these sessions.

Parents get a one-page information gathering sheet prior to attending the group workshop. Only basic information is requested: name of petitioner, name of proposed conservatee, address, social security number, etc. They are told to bring this sheet to the workshop.

It appears that parents are not given any other written materials or educational instruction prior to attending the group workshop. They do not receive advance information on the duties of a conservator or the rights of a conservatee.

At no time – prior to, during, or after the workshop – are parents given information about voting rights of an adult with developmental disabilities or criteria for deciding whether the voting rights of the proposed conservatee should be taken away.

Parents do not receive any information about criteria for deciding whether to ask the court to grant the conservator any or all of the "seven powers" or to allow the proposed conservatee the right to make his or her own decisions in these areas.

The "seven powers" include the authority to make decisions *for* the conservatee in: (1) deciding residence; (2) having access to confidential records; (3) consenting or withhold consent to marriage; (4) controlling finances; (5) consenting to medical treatment; (6) controlling social and sexual contacts; and (7) making educational decisions.

If parents have an attorney to represent them in the proceeding, the attorney would have an obligation to explain each of these "seven powers." The attorney would also have an obligation to explain that limited

conservatorships are intended for the conservatee to keep as many rights as possible so that he or she can live as independently as possible. Since the Clinic does not provide legal representation, none of this is explained to the parents during the workshop.

It appears the form used at the Clinic automatically asks that all "seven powers" be given to the conservator. The form does not seem to give the parent the option to check yes or no to individual powers.

The petition mentions the issue of voting. There is a place for the parent to specify whether the proposed conservatee is or is not able to complete an affidavit of voter registration. During the presentation that I attended, the power point slide on this issue had checked the "is not able" box on the form.

When I raised a question about how the workshop helps the parent decide whether to check off the "is able" or "is not able" box on voter registration, the answer was that it does not explain this. Parents are left to their own devices to make this decision.

Along with the petition, parents are instructed to fill out and file a proposed Order Appointing Court Investigator. The law specifies that in each case, a Probate Investigator (who works for the court) must investigate the case and conduct a face-to-face interview with the proposed conservatee.

The Legislature intended for the court to receive information about the proposed conservatee from multiple sources. This helps the court to verify the accuracy of information and the need to give any or all of the "seven powers" to the conservator.

A medical doctor or psychologist should file a capacity declaration with the court. The Regional Center should file an assessment of capacities on the "seven powers." A court investigator should also file a report, as should an attorney appointed to represent the proposed conservatee.

My review of a large sample of court dockets suggests that the court sometimes bypasses the Probate Investigator's report by having the parties to the case waive that report and allow the PVP attorney report to be used as a substitute. When I asked Josh Passman about that practice, he said that he was not aware of it, but that he had heard of the courts allowing the Regional Center report to be used as a substitute.

One item that is not included in the group workshop is the issue of ADA accommodation requests under the Americans with Disabilities Act.

The Superior Court has a form (MC-410) called "Request for Accommodations by Persons with Disabilities." This form can be used to inform the court that a party to a case has a disability, what that disability is, and how the court can accommodate the disability. It can be submitted by the person with a disability or by someone on his or her behalf, such as a parent.

The ADA requires the court, and attorneys representing clients, to give reasonable accommodations to litigants and clients with disabilities, both in and out of the courtroom. This does not just apply to physical disabilities. It also applies to cognitive and communication disabilities.

The request is intended to be confidential. Once the court knows the nature of the disability and the type of accommodation being requested, the court's ADA compliance officer should respond by granting or denying the request.

Parents are told at the workshop that their adult child will receive a court-appointed attorney. They learn that the "PVP attorney" will come to their home and is supposed to interview their child. They are also told that in most cases their child will be required to appear in court and to answer questions presented to them by the judge.

All limited conservatees have developmental disabilities. These may involve cognitive or communication functions. Many conservatees are nonverbal. Some experience emotional disruptions to attention span or speech functions. Many use Augmentative and Alternative Communication (AAC) technology.

It would certainly be appropriate for someone to explain the details of ADA accommodation to parents and to assist them in preparing an appropriate request to be filed when the petition and other paperwork is submitted to the court.

During the presentation, an unexpected issue came up that raised my eyebrow and caused me concern – waivers of court fees.

A fee of $435 is supposed to be paid by the petitioner when he or she files a petition for limited conservatorship. A Request to Waive Court Fees can be filed by the petitioner if he or she is getting public benefits, is a low-income person, or does not have enough income to pay for basic household needs and the court fees.

When a person with a developmental disability turns 18, he or she will be eligible to receive public benefits (Medi-Cal, Food Stamps, or SSI) based on their own income. Most of them, therefore, do or will receive public benefits.

Public benefits for the parents of a proposed conservatee are another matter. If they are low income, they may receive such benefits. If they are middle-income, they may or may not. If they are in the higher end of the income scale, they will not.

The workshop advises parents on how to fill out the fee waiver form in a manner that virtually guarantees that they will not have to pay filing fees or court costs – even if they have a high income household. Parents are informed they can check yes to the public benefits question if their child gets benefits.

When they print their name at the bottom of the fee waiver request, they are told to insert the words "based on income of proposed conservatee."

When I heard this at the presentation, a bell rang in my memory. I recalled wondering why so many fee waivers were granted in limited conservatorship cases. In a sample of 85 cases for the month of October 2013, fee waivers were granted in nearly all cases in which the petitioner filed the case without an attorney. Most of these were probably filed with the help of the Self Help Legal Clinic.

When I first noticed this pattern, I could not believe that nearly all parents of proposed conservatees had low incomes. Now I know that they do not.

The parents who come to the workshops and the walk-in clinic are helped regardless of household income. Some are poor, but others are middle income or higher. They can get around the need to pay a filing fee by declaring financial hardship, not based on the income of the petitioner, but based on the income of the proposed conservatee.

The morning after the presentation, I began to wonder if this fee waiver maneuver was legal. What do court rules and state statutes have to say about eligibility for waiver of court fees and costs?

Rule 3.50 of the California Rules of Court states that fees can be waived "based on the **applicant's** financial condition." (Emphasis added.) Rule 3.51 says the court clerk must give the fee waiver application form to anyone who asks if "he or she is unable to pay any court fee or cost." These rules suggest that fee waivers should be based on the financial condition of the person asking for the waiver. In this case, that is the parent (petitioner), not the child who will become the conservatee.

The Legislature has declared public policy on equal access to justice – who should pay fees and when they should be waived. Government Code Section 68630says "[t]hose who can afford to pay court fees should do so." That makes sense. Those who use the courts should help fund the courts, if possible.

Government Code Sec. 68631 tells courts to grant a fee waiver "if an **applicant** meets the standards of eligibility." Again, Section 68632 refers to "an **applicant's** financial condition." (Emphasis added.)

With these statutes and court rules in mind, and with the courts in a financial crunch due to a restricted state budget, it does not make sense that a parent with a household income of $100,000 would have

court fees waived in a limited conservatorship proceeding. Something seems amiss.

Clearly, telling the parents to insert the words "based on income of proposed conservatee" puts the court clerk on notice that the fee waiver request is totally unrelated to the income or assets of the petitioner or applicant for the fee waiver. It is also clear that the court clerk is routinely granting the requests.

The clerk would not be doing this without instructions from someone in authority, such as the chief clerk and/or the presiding judge.

If this fee waiver is occurring in most of the 1,000 petitions filed with the help of Bet Tzedek, then the Los Angeles County Superior Court could be losing hundreds of thousands of dollars per year in revenue.

Perhaps I am making an issue of something that is perfectly legal. I could have overlooked another relevant statute or court rule. Maybe a policy decision has been made that this fee waiver process complies with court rules and state statutes.

But this could be an informal practice that has developed without the knowledge of the Administrative Office of the Courts or the California Legislature. In any event, it is certainly a fiscal process that deserves closer attention.

Preliminary Recommendations

Based on what I learned at the presentation on the Self Help Legal Clinic, along with observations from reviewing scores of court dockets, analysis of statutory and case law, and various interviews, several ideas have emerged as to how the Limited Conservatorship System can be improved.

First, parents need to be educated about the duties of conservators and the rights of conservatees. This education should occur, prior to filing a petition for limited conservatorship, perhaps at a mandatory seminar for proposed conservators held at a Regional Center. Such a seminar would also explain the voting rights of adults with developmental disabilities, guidelines on the "seven powers," and the duty of judges and attorneys to provide ADA accommodations to proposed conservatees.

If parents seek assistance through a Self Help Legal Clinic, they should have to attend the seminar (perhaps a three hour training) prior to attending the group workshop. Parents are assuming a major responsibility and fundamental rights of the adult child are at stake. These cases should not be processed on such a fast moving assembly line.

After the parents attend a seminar on limited conservatorships, they should give the Regional Center a written notice of their intent to seek a limited conservatorship. This should trigger the duty of the Regional Center to conduct an assessment of the clients capacities and prepare a report and recommendations on which of the "seven powers" should be taken from the client. The parents should be required to read the Regional Center report prior to filing a petition with the court.

If a parent has an attorney, perhaps the seminar should not be mandatory. However, all proposed conservators, whether they have an attorney or file the petition "pro per," should be required to submit an acknowledgment of rights and duties with the court *when they file the petition*. The form should affirm that they have received and read the Conservatorship Handbook, the Duties of a Conservator form, and the Rights of Conservatees form.

The Regional Center report would be filed with the court prior to the appointment of a PVP attorney for the proposed conservatee. A court investigator report would be filed in all cases (and not be waived). The court would then have the variety of sources of information contemplated by the Legislature prior to the hearing on the petition.

Nothing that I have said diminishes the importance of the Self Help Legal Clinic or its vital role in helping parents. We sincerely hope that Bet Tzedek will support our effort to reform the Limited Conservatorship System, with the cooperation of relevant agencies and concerned individuals.