

Los Angeles County Bar Association
Limited Conservatorship Training

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Remarks of Laura Conti



I find it very interesting in terms of the evolution of limited conservatorships that the limited conservatorship system was developed in 1980. As we know in terms of comparison with general conservatorships versus limited conservatorships, general conservatorships are usually more appropriate for the elderly and for the fact that due to chronic mental illness they have been unable to address many of their needs or life decisions.

We contrast that with limited conservatorships whereas generally speaking most of our cases are ones with individuals that turn the age of 18 and so the parents are no longer able to make decisions for them. So we have a wide variety of cases wherein most limited conservatees are 18 to 22. They are just starting off their life. It is important to note that – as was mentioned by Jeff Marvan and Judge Cowan too – we’re trying to insure that they have the maximum amount of rights available to them.

We have regional centers too that were created to coordinate the services for people with developmental disabilities and to assist caregivers, service providers, and parents in helping these adults – whether they live independently, with their parents, in group homes, or in assisted living facilities.

That being said, we need to be aware of some changes that are occurring. The Judicial Council is considering new performance standards, qualifications, and continuing education requirements for PVP attorneys in limited conservatorship cases that could become effective as early as January 1, 2018.

The law that drives reform for the policies and practices of PVP attorneys in the Americans with Disabilities Act. I encourage every one of you to

start learning more, if you have not already, about the Americans with Disabilities Act. I’ve cited for you in the materials the website for ADA. The time to start learning about it now and its application to legal advocacy for clients with cognitive impairments.

There is considerable educational material that is available for attorneys who want to become qualified to perform effectively as advocates and defenders for limited conservatorship proposed conservatees. There have been recent articles in the Los Angeles Daily Journal last week regarding limited conservatorships and awareness. There is also a recent publication in the California Trusts and Estates Quarterly that I also cited in my materials. All food for thought and things that we need to be thinking about while we represent proposed conservatees.

There are also materials available from Spectrum Institute’s website: www.spectruminstitute.org.

I think it is a benefit to familiarize ourselves with the materials out there, and even more in terms of how we can best serve a proposed conservatee.

As a court-appointed attorney, we are in essence an arm of the government and through county pay or even private-pay matters with limited

conservatorships we are subject to the regulations of Title II and Title III. Title III of the ADA provides that we have a duty to ensure that a proceeding is accessible. We sometimes think about accessibility with individuals in the court system – certainly there is wheelchair accessibility, there is the ability to have interpreters for sign language and with Spanish interpreters. But the difficulty comes about when we have cognitive impairments. We need to become educated to ensure that the proposed conservatee has meaningful participation in the case.

We have become familiar in our role as a PVP attorney with medical conditions such as autism, cerebral palsy and other matters that qualify as a developmental disability. We need to know how the medical condition affects the ability of a proposed conservatee to communicate.

What do I mean by “meaningful participation?” The proposed conservatee is relying on us. If not for us, who can be their voice and who can advocate for them? So we need to ensure that proper procedures are followed. That the petition that’s before the court is supported by clear and convincing evidence. That the allegations in the area of 2351.5 powers are supported. That favorable witnesses are presented. That evidence is reviewed and challenged so that due process is received and that we’re providing effective assistance.

What should be a plan of a PVP attorney? Once you receive your appointment and before you meet with the proposed conservatee, you need to establish a disability assessment plan. You need to know what are the abilities of your proposed conservatee. Obviously, in part by reviewing the petition that has been filed with the court.

What is the normal mode of communication for the proposed conservatee? What is the best time to speak with or communicate with the proposed conservatee? Is it in the morning? Is it in the afternoon? Is there an environment wherein they

may feel more comfortable? It could be at school., or a day program. It could be at home.

If there is a propensity for a proposed conservatee to feel shy, to clam up when there is a new person being introduced, it should take, frankly, more than one visit with a proposed conservatee so that there is some level of continuity.

In terms of communication, does the proposed conservatee use any technology as a means of assisting in communication. An iPad, a cell phone, text, computer. You can find out this information by talking to the parents before you schedule your meeting. But also in terms of what Judge Cowan stated earlier, it’s not just the family it’s who else?

I would suggest that you speak to the case coordinator at regional center prior to your meeting with the proposed conservatee. I suggest that you obtain a copy of the IEP [Individual Educational Plan] before you go to your meeting and review it. The same with an IPP [Individual Program Plan]. I think you should be speaking with teachers and teacher’s aides. The more information that we can get – as sort of a cross check system at this point – will ensure we are getting valuable information and that it would at least be consistent. You want to have as much information as you can.

Once you are able to set forth a plan of such a nature, the next issue is going to be a meeting. Jeff Marvan spoke earlier about attorneys that meet with proposed conservatees being dressed in a suit and very formal. I think on the one hand, generally that’s how we dress. I think we need to be aware too that a proposed conservatee could feel intimidated by such formality.

It is quite often that proposed conservatees are people pleasers. I think you need to be aware of that. The proposed conservatee may be aware of the fact that there may be a social stigma with regard to their disability and so they may say

“yes, yes, yes” but in truth and in fact they really don’t understand. You need to be patient and no make it feel as though they are intimidated by any means. That’s why seeing them in different environments may actually be productive in terms of an analysis.

You need to look into the aspect of, is the petitioner the best choice as a conservator. Think we need to bring out to everyone’s attention the fact that there is – sad to say – abuse of developmentally disabled individuals and we need to be mindful and again cross check whether in fact our proposed conservatee is subject to abuse.

One of the things I would like to point out is the capacity declaration. It is important in reviewing it to know whether it has been prepared by the regular treating physician. If it is, that’s a good thing. If, on the other hand, there is one that has just been prepared for one purpose only, I think you really need to take note of that. Find out why is it that there is only one interview rather than a long standing period of time. I think we need to talk to the doctors who prepared the capacity declaration about whether they have ever had any suspicions of abuse. That’s one thing we can do for someone who has challenges with communication and expressing, that’s one wonderful thing we can do to help them.

We need to decide as part of our interview and our investigation whether all 2351.5 powers – if in fact they are being requested – should be granted or denied. In terms of assessing the 2351.5 powers, I think you need to realize that a 730 evaluation [Evidence Code Section 730] can be requested by the court in order to have an expert evaluate the seven powers. I don’t think anyone expects us to be an expert in those areas. We rely upon the advice and expertise of those who can provide it. Regional center representatives are not necessarily experts in that area. You need to ensure that if you have some areas of concern that: 1) you can go to court and request a 730 evaluation; and 2) an expert can be part of the IPP process in order to be part of a team in

order to evaluate the seven powers.

By questioning and investigating you are providing effective counsel and will be compliant with ADA regulations. This is an area because of the fact that you have to review everybody with caution. It is an area wherein you independently need to be able to evaluate. You need to take it a step further. It is insufficient, in my opinion, to just meet with a family and leave it at that. There is so much more that is involved with it.

In terms of the estate, you need to determine whether the proposed conservatee has an estate, regardless of whether they are recipients of SSI and Medi-Cal benefits, and bring to the court’s attention whether a special needs trust or any other estate planning tool should be considered, including whether there will be a potential inheritance the proposed conservatee will receive.

This is all very important because of the fact that, in terms of training, going out to find out the resources that are out there – familiarizing ourselves more with developmental disabilities. It is a responsibility to take on cases and to be an effective advocate for a proposed conservatee.

Failure to inform ourselves is something wherein we can be subjected to liability. I’m sure none of us want to go that direction. It is an important task that we are undertaking and we need to have the knowledge.

It is very difficult to cover all the role of a PVP attorney. These are only highlights. The best I can do is to provide you with the resources and hope that you can take a look at it a little bit further so that we can do the best in advocating for the proposed conservatee. Thank you. ♦♦♦

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This transcript of her remarks is available at:
www.spectruminstitute.org/pvp-role.pdf