

Access to Justice for the Disabled

By Thomas F. Coleman
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Over her lifetime, Theresa, now 84, was able to accumulate enough assets to finance a comfortable lifestyle in her golden years. She hired a financial consultant to help her invest the money. When the time came, Theresa moved into an independent living center in Los Angeles County where she made new friends. Theresa has no relatives.

The financial consultant introduced Theresa to a fiduciary. Theresa was asked to sign papers, which she did. Theresa later became aware that the papers gave the fiduciary a financial power of attorney. When she realized this, Theresa revoked the document – an action the fiduciary refused to accept.

The fiduciary went on the offensive by filing a petition to have Theresa placed under an order of conservatorship, asking that the fiduciary be appointed as conservator. The result would be ongoing fees paid to the fiduciary out of Theresa's sizeable estate.

Theresa demanded that her bank release her funds so she could open new accounts elsewhere. Caught between the competing demands of Theresa and the fiduciary, the bank would only give her a small amount of money – enough for Theresa to move to a new independent living center in Orange County.

With the help of an interested and friendly attorney, Theresa was able to make the move.

In response to the conservatorship petition, the Los Angeles County Superior Court appointed an attorney to represent Theresa in the proceedings. Unfortunately, the attorney aligned himself with the goals of the petitioner and has been actively advocating that his client be placed under an order of conservatorship. This was done despite recommendations to the contrary from a psychologist who examined

Theresa, a police detective specializing in elder abuse, and an elder care service provider. The attorney apparently believed that he knew what was best for Theresa, regardless of her wishes and despite ample evidence that she is competent.

Had Theresa's appointed attorney chosen to advocate for his client's right to make her own decisions, he would have had plenty of evidentiary ammunition.

After evaluating Theresa on multiple occasions, a neuropsychologist concluded that she "does not need to be conserved." Her declaration warned that Theresa may be a victim of financial abuse. The attorney's response? According to the psychologist's sworn statement: "He was angry, aggressive, and hostile. . . . He did not want to hear anything that did not involve [her] being put into a conservatorship."

As for possible financial abuse, a police detective who investigated the matter reported: "I have personally spent time interviewing Theresa . . . and found her to be attentive, understood my questions, and was able to carry on a conversation. She also had logical reasoning for her past financial decisions. It's my opinion, she did not appear dependent and had a clear understanding of the wrong doing she is receiving at the hands of others." The detective's opinion was ignored by Theresa's appointed attorney.

The senior housing consultant who helped Theresa find the new place in Anaheim gave examples of how Theresa was making good financial decisions "based on reasonable risks vs. rewards analysis." That too was rejected.

Fortunately for Theresa, the friendly attorney who assisted her in moving to Orange County, continues to take an interest in her case. He and another legal

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colleague have been helping Theresa fight to keep her rights. Although they have appeared with Theresa in court, the judge has not yet recognized their role as her legal advocates. Instead, Theresa is stuck paying the fees of a court-appointed lawyer – someone who is arguing against her wishes.

I am not surprised by Theresa's story. This case is an acute example of chronic dysfunction in a legal services program that all too often finds court-appointed attorneys advocating against their clients wishes or failing to do any meaningful advocacy at all.

My audits of dozens of conservatorship cases reveal a pattern and practice of appointed attorneys actively denying their clients access to justice.

Last year, my organization, the Spectrum Institute, wrote to the California Supreme Court to oppose a new rule proposed by the State Bar regarding lawyer-client communications – a rule that fails to even mention the Americans with Disabilities Act. That matter is still pending.

We met with the director of the Department of Fair Employment and Housing last March. DFEH has authority to investigate complaints against public entities that violate the ADA. State courts are such public entities. We were told they lack the resources to open a system-wide investigation but to bring them individual cases. This is such a case.

We made a presentation to the Probate and Mental Health Advisory Committee of the Judicial Council in 2014 and submitted a report to them in 2015. We documented proof of deficiencies in conservatorship policies and practices and asked for new rules to require ADA-compliant advocacy services by court-appointed attorneys. A two year-project by the committee on this subject is in its final phase.

The Judicial Council will soon release proposed new court rules on this subject for public comment. These rules will specify the duties of court-appointed attorneys who represent respondents in conservatorship proceedings.

Current court rules are vague and flimsy. It is time for the Judicial Council to flex its rule-making muscles and protect vulnerable litigants in these proceedings – proceedings in which their life-long assets and cherished personal liberties are threatened.

At the core of a constellation of legal rights that should protect these litigants is the promise of the ADA that people with disabilities should receive access to justice. This goal would be advanced through the adoption of ADA-compliant standards of practice, mandatory training programs, and effective mechanisms to monitor the performance of court-appointed attorneys in conservatorship cases.

As for Theresa, her case has a hearing scheduled in the coming weeks. But the stress of knowing that her appointed attorney is advocating against her has already taken a toll.

Theresa recently had a heart attack and is currently in a rehabilitation facility. She attributes the stress to the betrayal of her court-appointed attorney and the fear of having her freedom taken away and control of her life and her assets given to complete strangers.

The court should immediately remove the appointed attorney. Theresa should be allowed to have the legal team of her choice represent her – lawyers whom she trusts will use available evidence to support her right to manage her own life. To do otherwise would deny Theresa access to justice and would constitute a judicially-inflicted ADA violation of the highest order. ◇◇◇

Thomas F. Coleman is legal director of Spectrum Institute – a nonprofit organization advocating for reforms in California's conservatorship system and in state guardianship systems throughout the nation. Spectrum has filed class-based complaints with state and federal officials, asking them to correct continuing violations of the Americans with Disabilities Act by the conservatorship system in Los Angeles County and statewide.

www.spectruminstitute.org/guardianship
tomcoleman@spectruminstitute.org