

# Disability Rights California Can Become a Leading Advocate for Access to Justice in Conservatorship Proceedings

by Thomas F. Coleman

Disability Rights California is the “protection and advocacy” agency in California. As such, the California Legislature has given DRC authority to “[p]ursue administrative, legal, and other appropriate remedies or approaches to ensure the protection of the rights of people with disabilities.” (Welfare and Institutions Code Section 4902(a)(2))

The State of California provides millions of dollars per year to DRC to perform advocacy functions for people with disabilities. That state funding is over and above the considerable money DRC receives from the federal government and other sources.

In addition to central staff, which includes a team of lawyers, DRC has clients’ rights advocates in each of the regional centers throughout the state. DRC’s Office of Clients’ Rights Advocacy (OCRA) has a memorandum of understanding with all 21 regional centers that requires it to “comply with all applicable state, federal, departmental and regional center laws, contracts, and MOU’s governing the protection of clients’ rights.”

Such laws include the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, California’s Lanterman Developmental Disabilities Services Act, and California Government Code Section 11135. Each of these statutes applies to adults with intellectual and developmental disabilities who receive court orders requiring them to participate in probate conservatorship proceedings. These laws guarantee people with disabilities meaningful participation and effective communication in such court proceedings.

The MOU between OCRA and each regional center specifies that clients’ rights advocates will be available for consultation to regional center clients and staff regarding conservatorship matters. Also

mentioned in the MOU’s is a role for clients’ rights advocates to investigate and process complaints for violations of Title 17 of the California Code of Regulations.

Title 17 includes a section on “access rights.” (17 CCR Sec. 50510) This includes a right to advocacy services to protect and assert the civil, legal, and service rights to which any person with developmental disabilities is entitled. It also includes a right of access to the courts to contest a conservatorship, its terms, and/or the person appointed as a conservator.

The Lanterman Act says that no person with a developmental disability shall be denied the benefits of or be subjected to discrimination under any program or activity which receives public funds. (Welfare and Institutions Code Sec. 4502) Conservatorship proceedings are activities of the courts. Courts receive public funds. It is therefore a violation of the Lanterman Act when people with developmental disabilities are denied access to justice in such proceedings.

DRC has a multi-year contract with the Department of Developmental Services. Under the contract, DRC has a duty to provide clients’ rights advocacy services responsive to the access needs of persons with disabilities. For tens of thousands of adults with developmental disabilities, there is a need for access to justice in conservatorship proceedings.

The contract specifies that DRC shall protect and assert the rights of people with developmental disabilities under Title 17 of the California Code of Regulations. Of course, this would include “access rights” in conservatorship proceedings as described in Section 50510.

In addition to investigating and taking action to resolve complaints initiated by regional center



clients or their representatives, DRC also has authority to initiate action on behalf of clients who are unable to register complaints on their own behalf. This includes clients engaged in civil proceedings. Conservatorships are civil proceedings.

Based on these statutory and contractual [grants of authority](#), it is clear that Disability Rights California should be playing a major role in advocacy for individual regional center clients whose rights are being violated in conservatorship proceedings. Such rights violations may be premised on the policies and practices of the courts, or on the failures of regional centers, court investigators, or court-appointed attorneys to protect the rights of conservatees and proposed conservatees under state and federal laws – including disability rights laws.

DRC does not have to wait for specific complaints to be presented to it. Because of the nature and extent of their disabilities, most regional center clients would not know that their rights are being violated by judges, attorneys, or other participants in conservatorship proceedings.

If DRC waits for individual complaints, the legal system will perpetually deny access to justice to regional center clients because these clients generally lack the ability to complain. Therefore, to fulfill the advocacy role mandated by statute and by contract, DRC should be pro-active. It should identify systemic deficiencies. It should shine a light on policies and practices that deprive regional center clients of the access rights to which they are entitled in conservatorship proceedings.

These deficiencies have been brought to the attention of DRC over the past several years. Individual injustices in cases such as Mickey Parisio (2012) and Gregory Demer (2013) have been presented to DRC. Unfortunately, DRC did not advocate for these individuals in their time of need.

The problem of systemic injustices and the need for class-based reform have also been brought to the attention of DRC over the years. DRC was invited to participate in a roundtable conference on conservatorship reform (2014) but did not send a representative. An invitation to a voting rights conference

(2014) yielded the same result. It was asked to support a voting rights reform bill (2014) but did not. To its credit, DRC promoted a voting rights reform bill the following year.

DRC has not participated in conservatorship reform outreach efforts over the last several years to the California Supreme Court, Judicial Council, and Department of Developmental Services. It has not weighed in on complaints to the United States Department of Justice under the Americans with Disabilities Act.

That was then. This is now. It is time for optimism and inclusion. There is room at the conservatorship reform table for Disability Rights California.

DRC has the legal mandate, funding, and contractual obligations that should prompt the organization to take a leadership role in advocating for access to justice for people with developmental disabilities in conservatorship proceedings.

The staff of DRC does not have to start from scratch. DRC attorneys can immerse themselves in the [hundreds of documents](#) that have been published in the past several years about the need for conservatorship reform in California.

Advocacy for conservatorship reform will continue, with or without DRC, but the chances of success will be much improved if DRC's leadership puts this matter on the organization's agenda and makes access to justice in conservatorships a priority.

Come on in. The water may be a little chilly, but as seasoned advocates for disability rights, DRC staff have plenty of experience being in uncomfortable situations. All they need to test the conservatorship waters is approval from DRC's board of directors so they can add their skills to this reform movement.



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