



Disability and Guardianship Project Disability and Abuse Project

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December 27, 2018

Fair Employment and Housing Council
2218 Causen Drive, Suite 100
Elk Grove, CA 95758

Re: Request for a Formal Inquiry and Public Hearings

Dear Councilmembers:

Government Code Section 12935 authorizes the Fair Employment and Housing Council to hold hearings and publish the results of inquiries that will tend to minimize or eliminate unlawful discrimination or advance civil rights in the State of California.

Pursuant to this authority, we respectfully request the Council to hold hearings regarding civil rights violations that are occurring to thousands of seniors and people with disabilities who are required by the government to participate in probate conservatorship proceedings or who are placed under an order of conservatorship by the Superior Court of the State of California.

Our research indicates there may be as many as 60,000 adults in California who are living under an order of conservatorship. Their constitutional and statutory rights have been restricted by the court. About 5,000 new petitions for conservatorship are filed each year in this state. In the name of “protection,” these petitions seek to restrict the civil rights of those who are cited to appear in court.

The law presumes that every adult has the capacity to make his or her own decisions. These conservatorship petitions allege that the adult in question lacks such capacity in one or more areas of decision-making. Capacity to make decisions regarding medical services, place of residence, marriage, social and sexual contacts, finances, occupation, and education, are supposed to be determined by the court in a fair and impartial manner that complies with principles of due process. Because these respondents have actual or perceived cognitive and communication disabilities, they should receive accommodations and modifications from the court, under the Americans with Disabilities Act, to ensure they have effective communication and meaningful participation in the proceedings. Unfortunately, this is not happening in many, if not most, of these cases.

Statutory protections are being ignored. Constitutional rights are being infringed. Accommodations under the Americans with Disabilities Act are not even considered by the court or other participants in these proceedings. No single state official or agency is in charge of the probate conservatorship system. Therefore, these civil rights violations – rooted in systemic deficiencies – are allowed to exist and are likely to continue indefinitely unless there is an intervention. Calling attention to this statewide problem through public hearings by the Council could be an effective intervention.

The Council’s webpage says that the Council “conducts inquiries and holds hearings on civil rights issues confronting the state.” The ongoing violations of the civil rights of seniors and people with

disabilities in probate conservatorship proceedings falls into this category. We urge you to open an inquiry and to hold public hearings that will shine a light on the deficiencies in policy and practice that cause, contribute to, or allow these civil rights violations to occur on such a wide scale basis.

Here is a brief sample of civil rights violations. Stephen, an 18-year-old autistic man, saw his own court-appointed attorney argue that he should lose the right to vote. Gregory, a 26 year-old autistic man, was forced to visit with a parent whom he feared. The parent made Gregory attend church against his will. Gregory's own court-appointed attorney surrendered his First Amendment rights to freedom of association and freedom from religion. Olivia, an 18-year-old woman with autism, was forced into a conservatorship even though less restrictive alternatives were available. The conservator isolated Olivia from relatives and tried to interfere with Olivia's right to appeal. David, age 59, had been an producer at National Public Radio. He experienced a medical condition causing communication impairments. He was stripped of his right to vote in violation of the ADA. Theresa, age 84, is currently being forced into a conservatorship even though a trust would suffice to safeguard her estate. Her court-appointed attorney ignored Theresa's wishes and instead has argued that Theresa should have someone take total control over all aspects of her life. There are also scores of other cases where seniors have been victims of social isolation and financial abuse.

We encourage you to visit the "what's new" page of our website to see the list of officials we have contacted to address this problem in California. <http://disabilityandabuse.org/whats-new.htm> They include the Chief Justice of California, Supreme Court, Judicial Council, Attorney General, Department of Fair Employment and Housing, Department of Developmental Services, Secretary of the Health and Human Services Agency, Secretary of the Business, Consumer Services, and Housing Agency, Senate Judiciary Committee, and United States Department of Justice. Beside one intervention by the U.S. Dept. of Justice on voting rights in 2015, and some pending attorney education rules by the Judicial Council, the response has mostly been that of institutional indifference. A more direct and concerted effort to reform the system is needed in order to minimize or eliminate the serious civil rights abuses that are occurring each day in these legal proceedings.

There is a growing chorus of voices raising concerns about the conservatorship system and demanding reform. For example, a complaint was filed recently against the Sacramento Superior Court by Spectrum Institute, California Advocates for Nursing Home Reform, and The Arc of California alleging that the court's failure to appoint counsel to represent conservatees and proposed conservatees violates the ADA and Government Code Section 11135. A group of people who have been victimized in conservatorship proceedings in Orange County are holding a rally there in early January. With the help of Alameda County Supervisor Nathan Miley, another group of probate conservatorship civil rights victims are holding an event in Oakland on January 11.

A formal inquiry by the Council, and public hearings that shine a light on the problems we have described above, would help immensely. We therefore urge the Council to exercise the authority it has been given by the Legislature to address these issues during public hearings.

We would like to discuss this matter with the Council or its staff. Please let us know how the Council would like to proceed in response to our request.

Respectfully,

A handwritten signature in blue ink that reads "Thomas F. Coleman". The signature is written in a cursive, flowing style.

Thomas F. Coleman
Legal Director