Protection Court? Judges Cannot Protect People When They Cannot Find Them

by Thomas F. Coleman

Probate judges in California preside in a “court of protection” – a court with jurisdiction over people with mental illnesses or cognitive disabilities. This includes seniors and “dependent adults” who have intellectual and developmental disabilities.

When a judge enters an order declaring an adult to be a conservatee, the court is assuming the responsibility for the care and control of that individual. The judges, of course, cannot assume personal responsibility for the welfare of conservatees. The direct care and control is delegated, by court order, to a conservator.

Probate court investigators are responsible for taking pro-active steps to ensure that the conservatee is safe and receiving proper care. These investigators are required by statute to conduct home visits and investigate into the well-being of persons under the protection of the court. These visits and investigations must be done at least every two years.

A report issued in 2015 by the California Senate Judiciary Committee revealed that in some counties such investigations are so delinquent that there is a backlog of years. That is bad enough, but in Los Angeles County probate investigators are unable to perform their statutory duties in many cases because they cannot even find the conservatees. Yes, the “protection court” cannot protect these vulnerable adults because it has lost track of them.

An investigation by the Disability and Guardianship Project of Spectrum Institute suggests there may be thousands of vulnerable adults who cannot be found by the Los Angeles County Superior Court.

The problem of missing conservatees was confirmed by then Judge Maria Stratton, who at the time was the new presiding judge of the Probate Court in Los Angeles. At an oversight hearing conducted by the Senate Judiciary Committee on March 24, 2015, she disclosed the general nature of the problem but not the exact numbers of missing conservatees.

Kudos to Judge Stratton for alerting the Legislature to the problem. She inherited this mess when she was appointed presiding judge of the Probate Court in January 2015. Admitting there is a problem is the first step toward recovery. Data from the research of Spectrum Institute suggests the Los Angeles Superior Court has a lot of recovering to do.

Judge Stratton told the Judiciary Committee that at that time the court had 10,000 conservatees in its “active” inventory. However, in 2014 the court advised Spectrum Institute that it had 13,000 active cases – 7,643 limited, 2,093 dementia, and 3,341 other. That 3,000 person gap remains unexplained.

Regional centers in Los Angeles County reported they had 12,688 adult clients under an order of conservatorship in 2014. Add several thousand seniors and other adults with cognitive disabilities and the number of adults with open conservatorship cases in Los Angeles could be as high as 16,000. But the presiding judge said there were just 10,000 active cases. Why is there such a large discrepancy?

After hearing Judge Stratton’s testimony to the Senate, Spectrum Institute asked for records from the Los Angeles County Superior Court about the number of missing conservatees. The court claimed it had no such records. That is very hard to believe.

Does the Chief Justice know the conservatorship system is so badly broken that possibly thousands of conservatees cannot be found – and that’s just in Los Angeles? How many are missing in other counties?

It is unacceptable that judicial “protectors” cannot safeguard vulnerable “protees” because they cannot be located. The Chief Justice should ask the Judicial Council to survey all 58 superior courts to determine how many probate conservatees cannot be located in each of these jurisdictions. Such a survey is definitely in the purview of the Judicial Council. (Cal. Const. Art. VI, Sec. 6(d))

Thomas F. Coleman is the executive director of the Disability and Guardianship Project of Spectrum Institute. Email: tomcoleman@spectruminstitute.org
How Many DDS Consumers Are Conserved and Who Are Their Conservators?

In considering the extent of conservatorship of adults with I/DD in California and the impact of conservatorship on healthcare decision-making, it is useful to quantify the number of persons under conservatorship, and who serves as conservators. The California Department of Developmental Services provides the following information regarding the legal status of consumers in its system:

Figure 2: Legal Status of DDS Consumers

<table>
<thead>
<tr>
<th>Legal Status</th>
<th>Age18+ yrs</th>
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</thead>
<tbody>
<tr>
<td>No Conservator</td>
<td>100,979</td>
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<tr>
<td>Parent or Relative</td>
<td>25,500</td>
</tr>
<tr>
<td>Has Conservator - not DDS</td>
<td>11,597</td>
</tr>
<tr>
<td>Has Conservator - not DDS (Public Guardian)</td>
<td>871</td>
</tr>
<tr>
<td>Other (Has Conservator, Such as Private Conservator)</td>
<td>791</td>
</tr>
<tr>
<td>Ward of Court</td>
<td>522</td>
</tr>
<tr>
<td>Director of DDS</td>
<td>511</td>
</tr>
<tr>
<td>Unknown</td>
<td>344</td>
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<tr>
<td>Regional Center Director</td>
<td>168</td>
</tr>
<tr>
<td>Miscoded</td>
<td>1</td>
</tr>
<tr>
<td><strong>TOTAL ADULT CLIENTS</strong></td>
<td><strong>141,284</strong></td>
</tr>
</tbody>
</table>

Source: California Department of Developmental Services, July 2014

About 40,000 Adults with Intellectual Disabilities Have Open Conservatorship Cases in California

Information Taken from This Report:

THINKING AHEAD MATTERS

Supporting and Improving Healthcare Decision-Making and End-Of-Life Planning for People with Intellectual and Developmental Disabilities

August 2014
Updated January 2015

Laurel A. Mildred, MSW
Mildred Consulting

1331 Garden Highway, Suite 100
Sacramento, CA 95833
CoalitionCCC.org
Response of DDS to Public Records Request by Spectrum Institute

Total adults served by DDS .................................................. 145,414
Those who are not adult conservatee (Status 5 and Status N) ... 104,404
Total adults with I/DD who are conservatees ....................... 41,010

Los Angeles County DDS clients who are conservatee ........... 12,688 (30.9%)
(ELARC + FDLRC + HRC + NLACRC + SCLARC + SGPRC + WRC)

Adult Regional Center Consumers (Age 18 and Up)
Client Master File Data as of December 1, 2014

Request 1: The number of adult clients served by each regional center.
Request 2: The number of adult clients served by each regional center who are conservatees.

See table below and corresponding key on the following page.

<table>
<thead>
<tr>
<th>Regional Center</th>
<th>Legal Status 1</th>
<th>Legal Status 2</th>
<th>Legal Status 3</th>
<th>Legal Status 4</th>
<th>Legal Status 5</th>
<th>Legal Status 6</th>
<th>Legal Status 7</th>
<th>Legal Status 8</th>
<th>Legal Status 9</th>
<th>Legal Status N</th>
<th>Legal Status R</th>
<th>Other</th>
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<td>43</td>
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<td>42</td>
<td>7,302</td>
<td>2,295</td>
<td>67</td>
<td>10,790</td>
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<td>739</td>
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<td>24</td>
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<td>40</td>
<td>8,943</td>
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<td>15</td>
<td>21</td>
<td>15</td>
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<td>15</td>
<td>14</td>
<td>49</td>
<td>4</td>
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<td>1,163</td>
<td>8</td>
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<td>1</td>
<td>1</td>
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<td>15</td>
<td>7</td>
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<td>35</td>
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<td>7,090</td>
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<td>25</td>
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<td>2,899</td>
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<td>-</td>
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<td>15</td>
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<td>2,016</td>
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<td>SARCI</td>
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<td>79</td>
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<td>5</td>
<td>-</td>
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<td>VMRC</td>
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<td>13</td>
<td>18</td>
<td>-</td>
<td>9</td>
<td>4,292</td>
<td>1,012</td>
<td>177</td>
<td>5,803</td>
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<td>26</td>
<td>17</td>
<td>17</td>
<td>1,974</td>
<td>1,487</td>
<td>17</td>
<td>3,789</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Grand Total     | 858            | 12,581         | 520            | 527            | 176            | 353            | 103,377        | 25,751         | 771            | 145,414       |                |       |             |

Legal Status Key

'Legal Status' answers the question: "Does the consumer have a judicially appointed guardian or conservator?"

<table>
<thead>
<tr>
<th>Legal Status</th>
<th>Description</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Public Guardian</td>
<td>The public guardian for the county of residence of the consumer is the consumer's conservator. (Probate Code sections 2920, 2921)</td>
</tr>
<tr>
<td>3</td>
<td>Has Conservator -- Not DDS</td>
<td>The consumer has a conservator who is not the director of the Department of Developmental Services (DDS).</td>
</tr>
<tr>
<td>4</td>
<td>Director of DDS</td>
<td>The director of DDS is appointed as either guardian or conservator of the consumer and/or estate of a consumer. (Health and Safety Code sections 416, 416.5, 416.9)</td>
</tr>
<tr>
<td>5</td>
<td>Court (dependent child)</td>
<td>A minor consumer who is adjudged by the court to be a dependent of the court because of parental issues or the child's criminal conduct. (Welfare and Institutions Code section 300 or 601)</td>
</tr>
<tr>
<td>7</td>
<td>Regional Center Director</td>
<td>The director of a regional center that is the actual probate conservator or guardian of a consumer, as contrasted with being delegated the responsibility of performing conservatorship duties by DDS when DDS is the actual conservator. (Health and Safety Code section 416.19, Probate Code sections 1500, 1514, 1801, 2351.5)</td>
</tr>
<tr>
<td>9</td>
<td>Unknown</td>
<td>The consumer does not have a judicially appointed guardian or conservator.</td>
</tr>
<tr>
<td>N</td>
<td>No Guardian/Conservator</td>
<td>A family member of the consumer has been appointed probate conservator for an adult or guardian for a minor. (Probate Code sections 1500, 1514, 1801, 2351.5)</td>
</tr>
<tr>
<td>R</td>
<td>Consumer's Parent or Relative</td>
<td>The consumer has a guardian or conservator other than the possibilities above, such as a private conservator.</td>
</tr>
</tbody>
</table>
April 2, 2015

Honorable Maria Stratton
Presiding Judge, Probate Division
Los Angeles Superior Court
111 N. Hill Street
Los Angeles, CA 90012

Dear Judge Stratton:

The actions you have been taking to improve the processing of limited conservatorship cases in the Superior Court have been noticed. Even though you only assumed a leadership position in the Probate Court in January, you have acted with all deliberate speed on several fronts.

You reached out to our organization in February with an invitation to meet with you to discuss our concerns with the manner in which limited conservatorship cases have been handled in Los Angeles. You were very attentive at the meeting and took copious notes as I outlined those concerns.

The lunch seminar you conducted for attorneys who want PVP appointments was significant in many ways. Some of the speakers on the panel shared concerns about the current system in a very forthright manner – raising issues that have not been addressed in previous PVP seminars over the past few years. In addition to being open to the need for corrections to the system, you were very direct in your admonition to attorneys to be real advocates for the client and not to be lured into a “best interests” role. You could not have been more clear about this.

Your presentation in Sacramento at the Senate Judiciary Committee was significant. Your willingness to disclose flaws in the conservatorship system in Los Angeles demonstrated your desire to improve the process. The fact that court investigators can only spend one day a week in the field caught the attention of Senator Hannah-Beth Jackson who chairs the committee. This disclosure was so important that I discussed its implications in a summary of the hearing that I subsequently published. The second disclosure – that many conservatees cannot be located – was equally important. The fact that hundreds or more of vulnerable adults who are under the protection of the court cannot be found is something that needs to be addressed immediately. I sent an administrative records request to the Superior Court yesterday to find out just how many conservatees with open cases fall into the “missing” category. We may have suggestions about this so I would appreciate a quick reply to that request.

Thank you for your openness to change. Since our goal should be the same – increasing the prospect of access to justice for people with intellectual and developmental disabilities – we should work together to identify ways to improve the system. Let’s meet again to move this process forward.

Very truly yours,

Thomas F. Coleman
Executive Director
tomcoleman@spectruminstitute.org
(818) 482-4485 (cell)

cc: Justice Harry Hull (Judicial Council)
Judge John Sugiyama (Probate Advisory Committee)
Disturbing Details Revealed at Legislative Hearing on the Ability of California Courts to Protect Vulnerable Adults

by Thomas F. Coleman

As each of the 16 witnesses testified before the Senate Judiciary Committee this week, a common theme emerged. Bulging caseloads and shrinking budgets were interfering with the duty of state and local agencies to protect seniors and adults with disabilities from abuse and neglect.

The occasion was an oversight hearing into the role of the courts in protecting a growing population of seniors and dependent adults. Presiding over the hearing was state Senator Hannah-Beth Jackson (D-Santa Barbara).

Senator Jackson started the hearing by reminding everyone that the last such oversight hearing on conservatorships was in 2005. That hearing was prompted by articles published by the Los Angeles Times revealing mismanagement of conservatorships for seniors by the judges, attorneys, and conservators in such cases.

While the scheduled speakers mostly read from prepared scripts, and senators came and left the room from time to time, no one acknowledged the "elephant in the room" – a report issued that morning by Spectrum Institute criticizing the Judicial Branch for operational deficiencies in processing limited conservatorship cases.

Limited conservatorships are proceedings used exclusively for adults with intellectual and developmental disabilities. There are 40,000 such adults under conservatorship in California, with 5,000 new cases being opened each year.

The Legislature has never conducted an oversight hearing about the condition of the limited conservatorship system in California. Limited conservatorships and people with disabilities were barely mentioned by scheduled speakers.

That changed when I spoke at the end of the hearing. I presented the committee with a new report – Limited Conservatorships: Systematic Denial of Access to Justice – detailing how judges, attorneys, court investigators, and regional centers are failing to protect the rights of people with developmental disabilities.

The report calls on the Legislature to convene a Task Force on Access to Justice in Limited Conservatorships to investigate the findings of the study by Spectrum Institute. It also asks for the Bureau of State Audits to survey the courts in each county to document their policies and practices in handling these cases, and to conduct an audit of the system in Los Angeles.

Testimony by Judge Maria Stratton, Presiding Judge of the Probate Court in Los Angeles, underscored the need for such an audit. She told legislators that there are 10,000 open conservatorship cases in Los Angeles. This contradicts data released by the Department of Developmental Services which shows there are more than 12,000 open cases involving adults with developmental disabilities. In addition, there are thousands of other cases for seniors. There is a major discrepancy that needs to be reconciled.

Judge Stratton disclosed that many vulnerable adults under the court’s protection cannot be found. Thousands of them? For a protection court to lose track of that many people is very unsettling news.

She said the 20 court investigators have only one day a week to conduct field investigations. That means there are only 52 days a year to conduct field investigations on 2,100 new conservatorships, 2,100 annual reviews, and 5,000 biennial reviews, not to mention guardianships for minors. Do the math. Each investigator would have to do nine home visits on the only day each week assigned for field work. Really?

The proposals offered by Spectrum Institute were endorsed by the testimony of Greg deGiere who represented the Arc of California. The Arc is a statewide organization advocating for the rights of people with intellectual and developmental disabilities.

Legislators listened intently during my testimony. They were given the new report as well as a guide on how such a task force could function.

A task force was convened in 2006 to address the needs of seniors. The question now is whether people with disabilities will get the oversight they truly need – and deserve. The answer lies with the members of the Senate Judiciary Committee.

Attorney Thomas F. Coleman is Executive Director of the Disability and Guardianship Project of Spectrum Institute. www.spectruminstitute.org (March 27, 2015)
April 30, 2014

Thomas F. Coleman
c/o Dr. Nora J. Baladerian
2100 Sawtelle, #204
Los Angeles, CA 90025

Re: Requests per Rule 10.500

Dear Mr. Coleman:

The following is written in response to your inquiry dated April 24, 2014 for per Rule 10.500.

On April 26, 2014, we had the following conservatorship cases in active inventory:

Conservatorship – Limited 7,643
Conservatorship – Dementia 2,093
Conservatorship – Other 3,341

The Probate Code mandates first annual, annual and biennial reviews, based on the type of conservatorship ordered by the court.

The information regarding guardianship cases "Subject to Annual Reviews" or "Biennial Reviews" is not available in any document or report.

Sincerely,

[Signature]

Margaret Little, Ph.D.
Senior Administrator
Family Law & Probate Administration

ML: rma
To: Central Civil Operations Administration  
   Administrative Records Request

From: Thomas F. Coleman  
c/o Baladarian  
2100 Sawtelle, #204  
Los Angeles, CA 90025  
(818) 482-4485

Re: Request per rule 10.500

Date: April 22, 2014

Request 1: Access to Records – Open Cases – Subject to Annual Reviews

Please provide me access to records, and/or copies of records, in possession of or under the control of the Superior Court (memos, letters, reports, data sheets, etc.) which show:

   a. The number of “open” conservatorship cases which are subject to annual review by court investigators for the current fiscal year and/or the current calendar year. By open, I refer to probate code conservatorship cases (general and limited) in which a conservator has been appointed and the conservatee or limited conservatee is still living.)

   b. The number of “open” guardianship cases which are subject to annual review by court investigators for the current fiscal year and/or the current calendar year. By open, I refer to probate code guardianship cases in which a guardian has been appointed and the ward is still living and has not turned 18 years of age yet.

Request 2: Access to Records – Open Cases – Subject to Biennial Reviews

Please provide me access to records, and/or copies of records, in possession of or under the control of the Superior Court (memos, letters, reports, data sheets, etc.) which show:

   a. The number of “open” conservatorship cases which are subject to biennial review by court investigators for the current fiscal year and/or the current calendar year. By open, I refer to probate code conservatorship cases (general and limited) in which a conservator has been appointed and the conservatee or limited conservatee is still living.)

   b. The number of “open” guardianship cases which are subject to biennial review by court investigators for the current fiscal year and/or the current calendar year. By open, I refer to probate code guardianship cases in which a guardian has been appointed and the ward is still living and has not turned 18 years of age yet.