Disability and Guardianship Project

9420 Reseda Blvd. #240, Northridge, CA 91324
(818) 230-5156 • www.spectruminstitute.org

December 12, 2016

State Bar of California
Commission on Access to Justice
180 Howard Street
San Francisco, CA 94105

Attn: Ms. Kelli Evans, Office of Legal Services

Re: Improving Access to Justice in Limited Conservatorship Proceedings

Dear Commissioners:

I have asked Ms. Evans to forward to you the attached materials with the hope that you will find time to review them prior to the Commission's meeting in January. I believe this may be the first time that access to justice for adults with intellectual and developmental disabilities has been brought to the Commission's attention.

I have been studying the limited conservatorship system in California for the past several years and have written extensively on systemic problems – both in policy and practice – that contribute to the ongoing denial of access to justice for this class of litigants. If the attached materials spark an interest in learning more about the problems with this system, and what can be done to improve access to justice in limited conservatorship proceedings, you can go to the Digital Law Library on Disability and Guardianship. (http://spectruminstitute.org/library/) There, you will find more than 220 reports and articles on this subject. Much of the material focuses specifically on California.

The attached article published in the Daily Journal on November 2, 2016 discusses how litigants with cognitive and communication disabilities lack meaningful access to complaint procedures when their attorneys fail to perform legal services adequately. The attached 2016 Annual Agenda of the Probate and Mental Health Advisory Committee shows that the Judicial Council is beginning to take a look at problems I brought to their attention regarding the lack of standards for qualifications, performance, and training of court-appointed attorneys in limited conservatorship proceedings. The attached brochure of the Due Process *Plus* White Paper to the Department of Justice shows the scope and complexity of the problems concerning access to advocacy services – as required by the ADA.

I recently sent the State Bar a resolution for this Commission to consider adopting. If I can be of any assistance to the Commission as it considers this resolution or otherwise reviews these issues, please feel free to contact me.

Respectfully submitted:

Thomas F. Coleman

Thomas F. Coleman
Legal Director, Spectrum Institute
tomcoleman@spectruminstitute.org

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November 30, 2016

Ms. Elizabeth Rindskopf Parker
Executive Director
State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Proposal for a Workgroup on Limited Conservatorships

Dear Ms. Parker:

I am writing on behalf of Spectrum Institute to request that the State Bar convene a Workgroup on Limited Conservatorships. The workgroup would study and make recommendations on how judges, attorneys, and other participants in limited conservatorship proceedings can improve access to justice for people with intellectual and developmental disabilities in those and ancillary proceedings.

The draft of a resolution for the Commission on Access to Justice to convene such a workgroup is being submitted with this letter.

Over the past few years, I have done extensive research into the limited conservatorship system in California. Based on this research, I have published more than 220 articles and reports on how to improve access to justice for adults with intellectual and developmental disabilities in conservatorship proceedings in California and in similar guardianship proceedings in other states.

In the event that the State Bar were to convene a Workgroup on Limited Conservatorships, I would be pleased to serve as a special advisor in order to make my experience and expertise available as it investigates relevant issues and develops recommendations for consideration by the Legislature, State Bar, Supreme Court, Judicial Council, Superior Court of the State of California, and other relevant state and local government entities.

Respectfully submitted:

Thomas F. Coleman
Legal Director
Spectrum Institute
tomcoleman@spectruminstitute.org

cc: Mr. George Leal
Ms. Patricia Lee

D R A F T
Resolution of the Commission on Access to Justice to Convene a Workgroup on Limited Conservatorships

Whereas, data from the Department of Developmental Services indicates that more than 40,000 adults with intellectual and developmental disabilities have open conservatorship cases in which they are currently under the protection of the superior courts in California. It is estimated that up to 5,000 new conservatorship petitions are filed each year seeking to place such individuals under the protection of the superior courts; and

Whereas, California has created limited conservatorship proceedings exclusively for the protection of adults with developmental disabilities; and

Whereas, information has been brought to the attention of the State Bar of California that systemic problems with the limited conservatorship system, including alleged deficiencies in policies, practices, and procedures of judges, attorneys, and other participants in such proceedings, may be depriving adults with developmental disabilities of access to justice as respondents in such cases; and

Whereas, due to the nature of their cognitive, communication, and other disabilities, limited conservatorship respondents are generally unable to complain, either individually or as a class, about the denial of access to justice; and

Whereas, the vast majority of limited conservatorship respondents are indigents; and

Whereas, Spectrum Institute is a nonprofit organization that has been studying the limited conservatorship system in California and has reported numerous deficiencies in various aspects of this system that it states are denying access to justice to people with intellectual and developmental disabilities; and

Whereas, Spectrum Institute has brought these alleged deficiencies to the attention of relevant local, state, and federal agencies, but no coordinated action has been taken yet to study or address them on a statewide basis; and

Whereas, attorney Thomas F. Coleman, as legal director of Spectrum Institute, has extensively researched the limited conservatorship system and the role of its various participants, including judges, court-appointed attorneys, court investigators, capacity assessment experts, and regional centers, and has published numerous articles and reports suggesting ways that the system can be improved and how these participants can better provide limited conservatorship respondents with access to justice in these cases; and

Whereas, the role of court-appointed attorneys for limited conservatorship respondents, whether they be private attorneys or public defenders, is foundational to these respondents receiving access to justice and having meaningful participation in their cases; and

Whereas, if court-appointed attorneys were to provide their clients effective advocacy and defense services in these cases, such services would help to ensure that such clients would receive due process of law and would help ensure that all other participants in these cases comply with their own statutory and constitutional duties; and

Whereas, there are currently no statewide standards for qualifications, performance, or training of court-appointed attorneys in limited conservatorship proceedings; and

Whereas, due to the nature of their disabilities, respondents in limited conservatorship proceedings may lack access to the normal procedures used by litigants to complain about and remedy deficiencies in judicial proceedings, including deficiencies in the performance of their attorneys – such complaint procedures including "Marsden" motions and hearings in the superior courts, appeals to California's appellate courts, and administrative complaints to the State Bar; and

Whereas, there are no state or local agencies monitoring the performance of court-appointed attorneys to determine if such attorneys are providing advocacy and defense services that comply with statutory requirements, court rules, ethical standards, constitutional duties, or access-to-justice mandates of the Americans with Disabilities Act; and

Whereas, the Judicial Council of California has authorized its Probate and Mental Health Advisory Committee to study proposals submitted to it by Spectrum Institute and to develop new court rules on standards for qualifications, performance, and training of court-appointed attorneys in limited conservatorship cases; and

Whereas, the Advisory Committee will be releasing a draft of proposed new rules for public comment in the near future; and

Whereas, some of the access-to-justice problems identified by Spectrum Institute with limited conservatorship proceedings are beyond the purview of the current work of the Advisory Committee but are within the jurisdiction of the State Bar of California to study; and

Whereas, a review of the limited conservatorship system and recommendations for improving access to justice in such proceedings needs to be done by a study group composed of individuals with experience and expertise in the field of developmental disabilities, the administration of justice, and/or the application of the Americans with Disabilities Act to judicial proceedings involving litigants with such disabilities; and

Whereas, such a study group should be composed of individuals who do not have a potential or perceived conflict of interest or bias favoring the status quo – such as attorneys and judges currently involved in limited conservatorship proceedings, or involved in the appointment or payment of court-appointed attorneys, or involved in the training of such attorneys. However, individuals who are currently involved with limited conservatorships in such ways can participate as subject matter experts who submit information to a study group for its consideration;

Now, therefore, be it resolved, that:

1. The California Commission on Access to Justice hereby convenes a Workgroup on Limited Conservatorships.

2. The Workgroup shall review proposals developed by the Probate and Mental Health Advisory Committee pertaining to the improved administration of justice in limited conservatorship proceedings and shall provide comments to the Judicial Council about those proposals.

3. The Workgroup shall also review proposals submitted to it by research, education, and advocacy organizations and agencies, and subject-matter experts, on how to improve access to justice for people with intellectual and developmental disabilities in limited conservatorship proceedings and how to improve access to justice to such litigants in ancillary proceedings involving appeals to California's appellate courts and administrative complaints to the State Bar.

4. Members of the Workgroup should include self-advocates who have intellectual and developmental disabilities; representatives of disability rights advocacy organizations and agencies; professors who teach legal ethics; judges, private attorneys, and public defenders who are currently not involved in limited conservatorship proceedings but who have experience with litigants who have intellectual and developmental disabilities; former staff members of regional centers; medical and mental health professionals with expertise in capacity assessments; a representative of the Department of Developmental Services; and an ADA specialist with the State Bar of California.

5. Having extensively studied the limited conservatorship system and published numerous articles and reports on the subject over the past few years, attorney Thomas F. Coleman is appointed to serve as a special advisor to the Workgroup; and

6. The Workgroup shall develop one or more reports to the Commission on Access to Justice containing comments on new court rules proposed by the Probate and Mental Health Advisory Committee, as well as recommendations for actions that should be taken by the Legislature, the Judicial Council, the State Bar, the Supreme Court, the Superior Court of the State of California, and other relevant state and local agencies and organizations to improve access to justice for people with intellectual and developmental disabilities in limited conservatorships and other ancillary proceedings.

7. The report on proposals from the Probate and Mental Health Advisory Committee shall be submitted in a timely manner so that the Commission may provide comments on such proposals to the Judicial Council within the timetable established by the Judicial Council.

8. Other reports may be submitted by the Workgroup to the Commission as the Workgroup determines they are ready for the Commission's consideration.

Adopted by the Commission at its meeting on _____.