Disability and Guardianship Project

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December 7, 2019

Mr. Jorge Navarrete
ADA Coordinator
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Re: Conservatorship of Todd, Supreme Court #S259229, Court of Appeal #H046137
Ex-parte Notice of the Need for an ADA Accommodation for Victoria Todd

Dear Mr. Navarrete:

I am writing to you in your role as an ADA coordinator for the California Supreme Court. Your name was listed as such in a directory of ADA coordinators published by the Judicial Council.

This case was brought to my attention on December 5, 2019. I learned that Victoria Todd, listed as an "overview party" on the "parties and attorneys" page of the Supreme Court's website has for years had serious disabilities that may impair her ability to utilize the services of the Supreme Court. Her disabilities have been so significant that for several years she was under a LPS order of conservatorship with the Public Guardian for Santa Cruz County acting as her conservator.

Ms. Todd's parents have filed a petition for review in this Court, seeking review of the decision of the Court of Appeal for the Sixth Appellate District. A copy of that opinion is attached to this notice. The issue before the Court of Appeal was whether the Santa Cruz County Superior Court erred in denying a petition for probate conservatorship wherein Ms. Todd's parents sought to be appointed as her conservators instead of the Public Guardian who was appointed to serve as her conservator in a continuing LPS conservatorship.

The superior court proceeding, like the proceeding in the Court of Appeal and the proceeding in this Court all involve the life and well-being of a seriously disabled woman. Despite the fact that these proceedings involve her life and who should have had authority to make decisions on her behalf while she was in need of a conservatorship, Ms. Todd was not represented by counsel in the trial court or in the appellate court. The "parties and attorneys" page on the website of the Court of Appeal (attached) shows that the court did not appoint an attorney to represent her in the appellate proceeding. She did not participate pro per. Likewise, the "case information" pages on the website of the superior court show that she was not represented by counsel during the proceedings in the trial court. The superior court denied the petition without conducting a hearing and therefore the court never directly heard from Ms. Todd since she did not participate in that proceeding pro per.

Throughout the proceedings in the trial and appellate courts, the only attorney to appear was the Santa Cruz County Counsel representing the public guardian. The website page of the County Counsel (attached) makes it clear that the County Counsel represents agencies of county government, not private individuals. The County Counsel did not represent Ms. Todd in the trial court or on appeal. The minute order from the trial court denying the petition without an evidentiary

hearing (attached) shows that Ms. Todd was not personally present for that proceeding nor was she represented by counsel.

The appellate opinion explains on page 2 that the papers filed by the County Counsel in opposition to the petition stated that "respondent had learned from Todd that she did not want to appear at the hearing and that she opposed any parental control over her affairs." Had that statement come from Mr. Todd's own attorney, that would be one thing. But she was not present in court nor represented by her own attorney. The opinion of the Court of Appeal does not indicate whether the opposition to the petition was verified. Therefore, the superior court had before it, as did the Court of Appeal, a hearsay statement about Ms Todd's wishes. The accuracy of that assertion was never tested.

The Supreme Court now has a petition for review before it in a proceeding where the real party in interest, denominated "overview party," has had serious disabilities for several years that necessitated that her life be taken over in a conservatorship. And yet, despite the seriousness of her mental condition, this disabled party has never been represented by counsel.

Under the Americans with Disabilities Act and Government Code Section 11135, this Court has a duty to provide accommodations to litigants with known disabilities that may interfere with effective communications or meaningful participation in legal proceedings before this Court. The Court has a duty, sua sponte, to take appropriate steps to ensure that litigants with serious disabilities are able to receive the benefits of the services the Court provides.

In a proceeding involving a petition for review, Rule 8.500(a) of the California Rules of Court (attached) entitles a party, such as Ms. Todd, to file an answer to oppose or support the petition for review and to ask the court to address additional issues if it grants review. Normally, this would be a function fulfilled by the attorney representing the party in the Court of Appeal. However, the Court of Appeal, like the superior court, did not fulfill its own ADA duties to ensure that Ms. Todd would have effective communication and meaningful participation in the proceedings below.

At this juncture, without an accommodation or modification by this Court, Ms. Todd will be denied the benefit of Rule 8.500(a) due to her disabilities and the failure of the Court of Appeal to have provided her with an attorney on appeal. To compensate for this ADA failure, this Court could appoint an attorney to represent Ms. Todd in this Court for the purpose of determining whether to support or oppose the petition for review. Also as an accommodation, this Court could extend the time for filing such a responsive pleading until such time as an appointed attorney would be able to ascertain the wishes of Ms. Todd and to formulate an appropriate response to the petition.

Spectrum Institute is not representing Ms. Todd in the proceeding before this Court. Our organization is performing a civic duty out of a sense of moral obligation to bring to your attention as an ADA coordinator the fact that a woman who has had serious disabilities cannot access the services of the Supreme Court. This is not a request for an accommodation. It is a notice to the Supreme Court that it should act on its own motion to assess the need to provide this litigant with an accommodation.

All courts in California, whether at the trial or appellate level, have a *sua sponte* duty to provide accommodations when they learn that a litigant has a disability that, without accommodation, will prevent effective communication or meaningful participation in court proceedings. It is the knowledge of such a disabling condition, with or without a request, that triggers the duty of courts to take pro-active measures to provide appropriate accommodations. In a case such as this, the only effective accommodation would be the appointment of appellate counsel.

Appointing counsel as an ADA accommodation to ensure access to appellate justice for conservatees with cognitive disabilities is not unprecedented. On two occasions in the recent past the Second District Court of Appeal has done just that. In *Conservatorship of O.B.* (No. B290805), counsel was appointed for a conservatee who was an appellant. In *Conservatorship of A.E.* (B297092), counsel was appointed for a conservatee who was first designated as an overview party and then renamed as a respondent. In the former case, Spectrum Institute submitted a commentary to the California Appellate Project which then sent it to staff at the Second District. In the latter case, counsel was appointed after we wrote to the ADA coordinator regarding the court's duties under Title II of the ADA and Government Code Section 11135 which incorporates the ADA into state law.

The failure of courts to appoint counsel for proposed conservatees was brought to the attention of the Supreme Court in an *amicus curiae* brief we recently filed. (S254838). Contributing to this problem is Rule 1.100 and materials published by the Judicial Council that incorrectly declare that ADA accommodations need not be provided without a request. This is contrary to federal law.

California courts do have a duty to provide ADA accommodations, *sua sponte*, to litigants with known disabilities when those disabilities may impair effective communication or meaningful participation in legal proceedings. A written report on this subject was recently submitted to the Judicial Council. It can be found online at: http://spectruminstitute.org/ada-compliance.pdf

Whether a disabled litigant in a conservatorship appeal is designated as appellant, respondent, or overview party should not matter. When an appellate court knows that a party has a disability that may preclude self-representation, it has a duty to provide an accommodation in the form of appointed counsel. This duty is not dependent on a request for an accommodation being made by the disabled litigant. Requiring a request from those who may not be able to do so would preclude an entire class of disabled litigants from the protections of the ADA. Federal law requires courts to provide an appropriate accommodation on its own motion under circumstances such as this. (See attachment)

Please bring this notice to the attention of the Supreme Court as a reminder of its obligations under Title II of the ADA. If this Court appoints counsel as suggested in this notice, counsel may decide to ask this Court to grant review to consider "additional issues" not presented in the petition for review, namely, whether the decisions of the trial court and appellate court should be reversed for the failure of those courts to appoint an attorney to represent Ms. Todd in those proceedings. Some trial courts appoint counsel routinely in such matters, while others do not. Some appellate courts appoint counsel for disabled litigants while others do not. Appointed counsel may argue that granting review is necessary to secure uniformity of decision or to settle an important question of law on the duty of trial and appellate courts under the ADA or as a matter of due process to appoint counsel for litigants with serious cognitive or other disabilities that interfere with their ability to effectively participate in the proceedings in which they are entangled. Or appointed counsel may choose some other path. Either way, Ms. Todd will not be able to effectively participate in the proceedings pending in this court without appointment of counsel as an ADA accommodation.

Respectfully,

Thomas F. Coleman
Legal Director
(818) 482-4485

cc: ADA Coordinators, Sixth District Court of Appeal, Santa Cruz County Superior Court

California Rules of Court

(Revised September 1, 2019)

Rule 8.500. Petition for review

(a) Right to file a petition, answer, or reply

(1) A party may file a petition in the Supreme Court for review of any decision of the Court of Appeal, including any interlocutory order, except the denial of a transfer of a case within the appellate jurisdiction of the superior court.

(2) A party may file an answer responding to the issues raised in the petition. In the answer, the party may ask the court to address additional issues if it grants review.

(3) The petitioner may file a reply to the answer.

(Subd (a) amended effective January 1, 2004.)

(b) Grounds for review

The Supreme Court may order review of a Court of Appeal decision:

(1) When necessary to secure uniformity of decision or to settle an important question of law;

(2) When the Court of Appeal lacked jurisdiction;

(3) When the Court of Appeal decision lacked the concurrence of sufficient qualified justices; or

(4) For the purpose of transferring the matter to the Court of Appeal for such proceedings as the Supreme Court may order.

(Subd (b) amended effective January 1, 2007.)

(c) Limits of review

(1) As a policy matter, on petition for review the Supreme Court normally will not consider an issue that the petitioner failed to timely raise in the Court of Appeal.

(2) A party may petition for review without petitioning for rehearing in the Court of Appeal, but as a policy matter the Supreme Court normally will accept the Court of Appeal opinion's statement of the issues and facts unless the party has called the Court of Appeal's attention to any alleged omission or misstatement of an issue or fact in a petition for rehearing.

(d) Petitions in nonconsolidated proceedings

If the Court of Appeal decides an appeal and denies a related petition for writ of habeas corpus without issuing an order to show cause and without formally consolidating the two proceedings, a party seeking review of both decisions must file a separate petition for review in each proceeding.

(e) Time to serve and file

(1) A petition for review must be served and filed within 10 days after the Court of Appeal decision is final in that court. For purposes of this rule, the date of finality is not extended if it falls on a day on which the

office of the clerk/executive officer is closed.

(2) The time to file a petition for review may not be extended, but the Chief Justice may relieve a party from a failure to file a timely petition for review if the time for the court to order review on its own motion has not expired.

(3) If a petition for review is presented for filing before the Court of Appeal decision is final in that court, the clerk/executive officer of the Supreme Court must accept it and file it on the day after finality.

(4) Any answer to the petition must be served and filed within 20 days after the petition is filed.

(5) Any reply to the answer must be served and filed within 10 days after the answer is filed.

(Subd (e) amended effective January 1, 2018; previously amended effective January 1, 2007, and January 1, 2009.)

(f) Additional requirements

(1) The petition must also be served on the superior court clerk and the clerk/executive officer of the Court of Appeal.

(2) A copy of each brief must be served on a public officer or agency when required by statute or by rule 8.29.

(3) The clerk/executive officer of the Supreme Court must file the petition even if its proof of service is defective, but if the petitioner fails to file a corrected proof of service within 5 days after the clerk gives notice of the defect the court may strike the petition or impose a lesser sanction.

(Subd (f) amended effective January 1, 2018; previously amended effective January 1, 2004, and January 1, 2007.)

(g) Amicus curiae letters

(1) Any person or entity wanting to support or oppose a petition for review or for an original writ must serve on all parties and send to the Supreme Court an amicus curiae letter rather than a brief.

(2) The letter must describe the interest of the amicus curiae. Any matter attached to the letter or incorporated by reference must comply with rule 8.504(e).

(3) Receipt of the letter does not constitute leave to file an amicus curiae brief on the merits under rule 8.520(f).

(Subd (g) amended effective January 1, 2007; previously amended effective July 1, 2004.)

Rule 8.500 amended effective January 1, 2018; repealed and adopted as rule 28 effective January 1, 2003; previously amended effective January 1, 2004, July 1, 2004, and January 1, 2009; previously amended and renumbered effective January 1, 2007.

Advisory Committee Comment

Subdivision (a). A party other than the petitioner who files an answer may be required to pay a filing fee under Government Code section 68927 if the answer is the first document filed in the proceeding in the Supreme Court by that party. See rule 8.25(c).

Subdivision (a)(1) makes it clear that any interlocutory order of the Court of Appeal-such as an order denying an application to appoint counsel, to augment the record, or to allow oral argument-is a "decision" that may be challenged by petition for review.

Subdivision (e). Subdivision (e)(1) provides that a petition for review must be served and filed within 10 days after the Court of Appeal decision is *final in that court*. Finality in the Court of Appeal is generally governed by rules 8.264(b) (civil appeals), 8.366(b) (criminal appeals), 8.387(b) (habeas corpus proceedings), and 8.490(b) (proceedings for writs of mandate, certiorari, and prohibition).

Appellate Courts Case Information

Supreme Court

Change court

Court data last updated: 12/06/2019 05:07 AM

Parties and Attorneys

TODD, CONSERVATORSHIP OF
Division SF
Case Number S259229

Party	Attorney
Viatcheslav Boiko : Petitioner and Appellant 901 Capitola Road, Unit D Santa Cruz, CA 95062	Pro Per
Santa Cruz County Public Guardian : Objector and Respondent	Tamyra Rice Office Of The County Counsel 701 Ocean Street, Room 505 Santa Cruz, CA 95060-4068
Victoria Todd : Overview party	

Click here to request automatic e-mail notifications about this case.

Appellate Courts Case Information

6th Appellate District

Change court

Court data last updated: 12/06/2019 05:07 AM

Parties and Attorneys

Boiko v. Santa Cruz County Public Guardian
Case Number H046137

Party	Attorney
Viatcheslav Boiko : Petitioner and Appellant 901 Capitola Road, Unit D Santa Cruz, CA 95062	Pro Per
Santa Cruz County Public Guardian : Objector and Respondent	Tamyra Rice Office Of The County Counsel 701 Ocean St. Room 505 Santa Cruz, CA 95060-4068
Conservator of the Person of Victoria Todd : Overview party	

Click here to request automatic e-mail notifications about this case.

Case Information

PR046276 | Conservatorship of the Person and Estate of Victoria Todd

Case Number	Court	Judicial Officer
PR046276	**Probate**	**Burdick, Paul**
File Date	Case Type	Case Status
03/28/2014	**Conservatorship**	**Appealed**

Party

Petitioner
Boiko, Ludmila

Active Attorneys ▾
Pro Se

Petitioner
Boiko, Viatcheslav

Active Attorneys ▾
Pro Se

Events and Hearings

03/28/2014 *

03/28/2014 Fee Waiver Requested

03/28/2014 *

03/28/2014 Document Filed

03/28/2014 Notice of Hearing Filed - Probate / Mental Health

03/28/2014 Petition Filed

03/28/2014 Fee Waiver Requested

04/02/2014 Fee Waiver Additional Requested

04/02/2014 Citation Issued

04/03/2014 Confidential Conservator / Guardian Screening Form Filed

04/03/2014 Confidential Form Filed

04/03/2014 Duties & Liabilities of Personal Rep / Guard / Conserv Filed

04/03/2014 Document Filed

04/03/2014 Document Filed

04/03/2014 Change of Address / Residence Notice Filed

04/03/2014 Fee Waiver Granted

04/03/2014 Document Received

04/03/2014 Document Received

04/04/2014 *

04/04/2014 *

04/04/2014 Fee Waiver Additional Denied

04/04/2014 Fee Waiver Requested

04/07/2014 Amended

04/07/2014 Document Filed

04/08/2014 Fee Waiver Additional Requested

04/08/2014 Fee Waiver Additional Granted

04/08/2014 Fee Waiver Requested

04/14/2014 *

05/16/2014 Confidential Investigative Report Filed

05/20/2014 Proof of Service

05/23/2014 Petition Hearing ▾

Original Type
Petition Hearing

Judicial Officer
Connolly, Rebecca

Hearing Time
8:30 AM

Result
Held

Parties Present
Petitioner: BOIKO, LUDMILA

05/23/2014 Dismissal of Petition

09/28/2016 Public Historical Documents

05/31/2017 Fee Waiver Requested

05/31/2017 Fee Waiver Granted

05/30/2018 Petition Filed

05/30/2018 Ex Parte Application - No Fee

05/30/2018 Order Filed

05/30/2018 Proposed Order/Judgment Received

05/30/2018 Proposed Order/Judgment Received

05/30/2018 Letters Received

05/30/2018 Fee Waiver Requested

05/30/2018 Fee Waiver Granted

05/30/2018 Motion

05/30/2018 Proposed Order/Judgment Received

05/30/2018 Declaration

05/30/2018 Ex Parte Application - No Fee

05/30/2018 Notice

05/30/2018 Confidential Referral to Court Investigator

05/30/2018 Petition Filed

05/30/2018 Confidential Conservator / Guardian Screening Form Filed

05/30/2018 Confidential Supplemental Information

05/30/2018 Duties & Liabilities of Personal Rep / Guard / Conserv Filed

05/30/2018 Proposed Order/Judgment Received

05/30/2018 Letters Received

06/01/2018 170.6 Disqualification Granted ▾

Judicial Officer
Gallagher, John

06/05/2018 Notice

06/05/2018 Notice of Hearing Filed - Probate / Mental Health

06/07/2018 Opposition

06/08/2018 Proof of Service

06/11/2018 Ex Parte Order

07/17/2018 Opposition to Petition

07/31/2018 Proof of Service

07/31/2018 Proof of Service

08/01/2018 Proof of Service

08/01/2018 Proof of Service

08/22/2018 Confidential Investigative Report Filed

08/27/2018 Petition Hearing ▾

Judicial Officer
Burdick, Paul

Hearing Time
8:30 AM

Result
Held

Parties Present ▴
Petitioner: Boiko, Viatcheslav

08/27/2018 Notice of Appeal Filed (Sixth)

08/27/2018 Fee Waiver Requested

08/27/2018 Fee Waiver Granted

08/27/2018 Notice of Filing Notice of Appeal

09/12/2018 Appeal Default Notice Issued

09/28/2018 Appeal - Appellant Designations Filed

09/28/2018 Appeal Default Notice Issued

10/04/2018 Appeal - Respondents Designations Filed

10/04/2018 Proof of Service

10/04/2018 Appeal Default Notice Issued

10/31/2018 Appeal - Record Certified / Transferred to Reviewing Court

10/31/2018 Original Clerks Transcript 1-5 Volumes

10/29/2019 Document Received

11/06/2019 Fee Waiver Additional Requested

11/06/2019 Fee Waiver Additional Denied

County Counsel

Dana McRae,
County Counsel
701 Ocean Street, Room 505
Santa Cruz, CA 95060
Information: (831) 454-2040
Fax: (831) 454-2115

The County Counsel is the lawyer for the county government. When the county is sued or otherwise named in a lawsuit, the County Counsel appears in court to represent the county's interests. The County Counsel also serves as legal counsel to all County officials and departments including the Board of Supervisors. Other responsibilities include drafting local laws, reviewing contracts, and providing other legal advice. The office represents County departments and related public agencies in the course of their official business and does not represent individuals in private legal matters.

The County Counsel also oversees the Criminal Defense Conflicts Program. The main purpose of the program is to establish and maintain a panel of attorneys eligible for appointment by the Superior Court to represent indigent criminal defendants and other clients, when the Public Defender and the Conflict Public Defenders have declared a conflict. If you are interested in receiving appointments to criminal cases as an independent contractor for the County of Santa Cruz, please click on the following links:

- **Santa Cruz County Criminal Defense Conflicts Program Attorney Application Form**
- **Santa Cruz County Criminal Defense Conflicts Program Case Types**
- **Santa Cruz County Criminal Defense Conflicts Program Policies and Procedures**

Superior Court of California, Santa Cruz
MINUTE ORDER

Conservatorship of the Person and Estate of Victoria Todd

PR046276

Heard By: Burdick, Paul

Courtroom Clerk: Helena Mendez
Courtroom Reporter: No Reporter

Santa Cruz Department 5
Petition Hearing
08/27/2018
8:30 AM - 9:30 AM

Parties Present:

Boiko, Viatcheslav	Petitioner
Rice, Tamyra	Attorney
Bertsche, Vanessa	Public Guardian

The Court recites its tentative ruling to deny the Petition for Appointment of Conservatorship.

Mr. Boiko addresses the issues now before the Court.
County counsel submits on the matter.

The Court denies the petition for appointment of conservatorship.

Filed 10/29/19 Conservatorship of Todd CA6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

Conservatorship of the Person and Estate of VICTORIA TODD.	H046137 (Santa Cruz County Super. Ct. No. PR046276)
VIATCHESLAV BOIKO, Petitioner and Appellant, v. SANTA CRUZ COUNTY PUBLIC GUARDIAN, Objector and Respondent.	

Appellant Viatcheslav Boiko appeals from an order denying his petition for appointment as the probate conservator of the person and estate of Victoria Todd, his daughter. The order is affirmed.

I. Factual and Procedural Background

In 2014, Ludmila Boiko, Todd's mother, sought to be appointed the temporary probate conservator of Todd's person. The petition was denied.

On August 16, 2017, respondent Santa Cruz County Public Guardian was appointed Todd's conservator under the provisions of the Lanterman-Petris-Short Act

(LPS). On October 24, 2017, respondent was appointed the permanent LPS conservator for one year.

On May 30, 2018, appellant sought to be appointed the temporary and permanent probate conservator of Todd's person and estate. He also filed an ex parte application for good cause to excuse providing notice to respondent of the hearing on the petition. The trial court denied the application to dispense with notice, ordered that notice be provided to respondent and Todd, and set a hearing on the temporary conservatorship on June 11, 2018.

On May 30, 2018, Boiko filed a motion to disqualify Judge John Gallagher. The motion was granted on June 4, 2018.

On June 7, 2018, respondent filed opposition to the petition for appointment of a temporary conservator. The opposition alleged: respondent was, and had been, the LPS conservator of Todd's person since June 5, 2014; the LPS conservatorship was necessary to place Todd in a mental health facility; there was no estate to manage; and respondent had learned from Todd that she did not want to appear at the hearing and she opposed any parental control over her affairs.

On June 11, 2018, the petition for temporary conservatorship of the person and estate was denied.

On July 17, 2018, respondent filed opposition to the appointment of a permanent conservator and alleged the same reasons as set forth in the opposition to the petition for temporary conservatorship.

Following a hearing on August 27, 2018, the petition for appointment of a probate conservator was denied.[1]

Appellant filed a timely notice of appeal.[2]

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[1] The LPS conservatorship expired on October 24, 2018.

[2] This court deemed appellant's motion to augment on appeal as a request for judicial notice and granted it in part. This court took judicial notice of the petition to

II. Discussion

Appellant contends that the present case involves a miscarriage of justice due to the illegal conduct of respondent, which was covered up by the "hypocrisy, corruption, illegitimacy of County Counsel," and that the judges in Santa Cruz County were biased against him. He asserts that "[t]here is not enough vocabulary to vocalize the torture, assault and battery at the hands of Law Enforcement, [respondent] and Behavioral Health Department." He further asserts that respondent, the "Behavioral Health Division, County Counsel and Judges" arranged Todd's "kidnapping for illegal involuntary treatment."

Appellant also contends that the trial court did not question him and that respondent prohibited Todd from attending the hearing.

A fundamental rule of appellate review is that "'[a] judgment or order of the lower court is *presumed* correct'" and "'error must be affirmatively shown.'" (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) The appellant has the burden of overcoming the presumption of correctness. The party asserting error must also "*designate an adequate record.*" (*Electronic Equipment Express, Inc. v. Donald H. Seiler & Co.* (1981) 122 Cal.App.3d 834, 858, fn. 13, italics added.) "[I]f the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed." (*Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1051, fn. 9.)

Here, the appellate record is inadequate. Since appellant has failed to provide a reporter's transcript of the hearing before the court, we are unable to determine what issues he raised and evidence he presented. As respondent points out, appellant also failed to include, among other things: proof of service of the citation for conservatorship

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remove filed on September 4, 2018, and a declaration filed on October 23, 2018, in case No. 15MH00017. These documents were filed after appellant filed his notice of appeal and are not relevant to the present appeal.

and a copy of the petition to Todd (Prob. Code, §§ 1823, subd. (a), 1824); a capacity declaration by a physician that Todd lacked the capacity to give an informed consent for medical treatment (Prob. Code, § 1890, subd. (c)); and a confidential supplemental information form (Prob. Code, § 1821). Thus, appellant has failed to carry his burden to show error by the court when it denied his petition.

In addition, "[i]t is the duty of counsel by argument and the citation of authorities to show that the claimed error exists." (*In re Estate of Randall* (1924) 194 Cal. 725, 728.) Self-represented parties are held to the same standards as parties who are represented by counsel. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.) An appellate brief must "[s]tate each point under a separate heading or subheading summarizing the point, and support each point by argument and, if possible, by citation of authority." (Cal. Rules of Court, rule 8.204(a)(1)(B).) "When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived. [Citations.]" (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785.) Here, appellant has failed to cite to any portion of the record on appeal. He has also failed to support his claims with "reasoned argument and citations to authority." (*Id.* at p. 784.) Thus, his claims have been waived.[3]

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[3] In his reply brief, appellant argues for the first time that this matter required service of documents on the Attorney General pursuant to California Rules of Court, rule 8.29, because it involves a constitutional challenge. "'Points raised for the first time in a reply brief will ordinarily not be considered, because such consideration would deprive the respondent of an opportunity to counter the argument.' [Citation.]" (*Browne v. County of Tehama* (2013) 213 Cal.App.4th 704, 720, fn. 10.) In any event, his argument has no merit. "[A] party must serve its brief or petition on the Attorney General if the brief or petition: [¶] (1) Questions the constitutionality of a state statute; . . ." (Cal. Rules of Court, rule 8.29(c)(1).) Here, appellant has not challenged the constitutionality of a statute.

III. Disposition

The order is affirmed. Costs on appeal are awarded to respondent.

Mihara, Acting P. J.

WE CONCUR:

Grover, J.

Danner, J.

Boiko v. Santa Cruz County Public Guardian
H046137

"If no request for an accommodation is made, the court need not provide one."

– *Judicial Council* 2017 Brochure *

Any program or activity that is funded by the state shall meet the protections and prohibitions of Title II of the ADA and federal rules and regulations implementing the ADA. (Cal. Gvt. Code Sec. 11135)

A public entity must offer accommodations for *known* physical or mental limitations. (Title II Technical Assistance Manual of DOJ)

Even without a request, an entity has an obligation to provide an accommodation when it knows or reasonably should know that a person has a disability and needs a modification. (DOJ Guidance Memo to Criminal Justice Agencies, January 2017)

Some people with disabilities are not able to make an ADA accommodation request. A public entity's duty to look into and provide accommodations may be triggered when the need for accommodation is obvious. (*Updike v. Multnomah County* (9th Cir 2017) 930 F.3d 939)

It is the knowledge of a disability and the need for accommodation that gives rise to a legal duty, not a request. (*Pierce v. District of Columbia* (D.D.C. 2015) 128 F.Supp.3d 250)

A request for accommodation is not necessary if a public entity has knowledge that a person has a disability that may require an accommodation in order to participate fully in the services. Sometimes the disability and need are obvious. (*Robertson v. Las Animas* (10th Cir. 2007) 500 F.3d 1185)

The failure to expressly request an accommodation is not fatal to an ADA claim where an entity otherwise had knowledge of an individual's disability and needs but took no action. (*A.G. v. Paradise Valley* (9th Cir. 2016) 815 F.3d 1195)

The import of the ADA is that a covered entity should provide an accommodation for *known* disabilities. A request is one way, but not the only way, an entity gains such knowledge. To require a request from those who are unable to make a request would eliminate an entire class of disabled persons from the protection of the ADA. (*Brady v. Walmart* (2nd Cir. 2008) 531 F.3d 127)

* Rule 1.100 and all Judicial Council educational materials are erroneously premised on the need for a request.