



Complaint to the Sacramento Superior Court

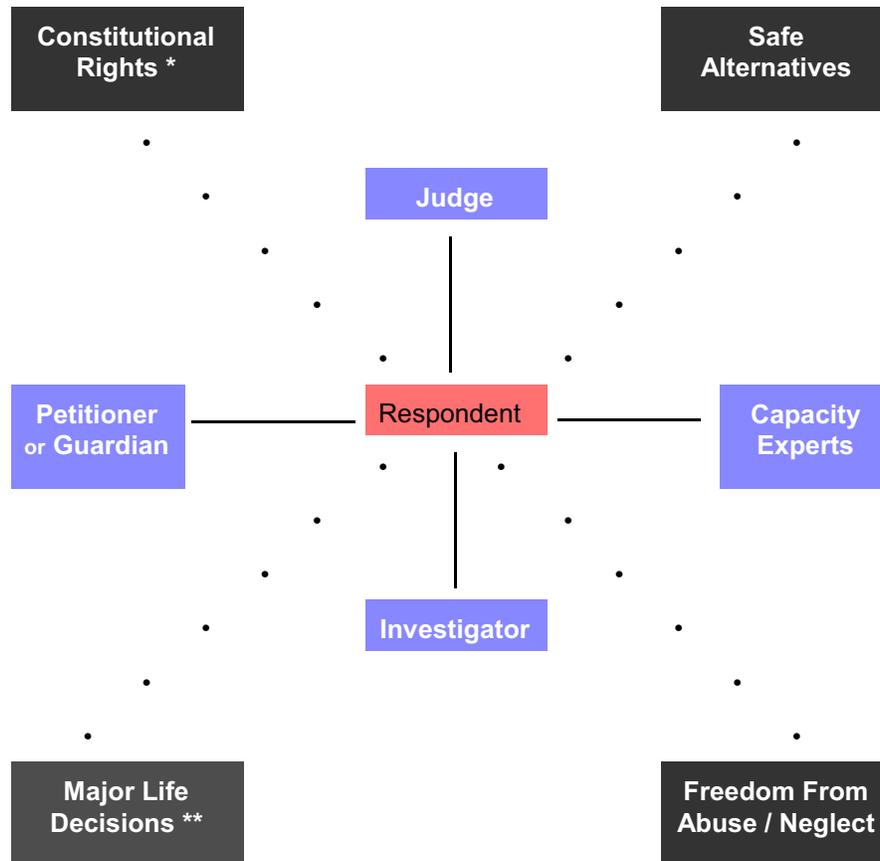
Per ADA Title II Regulations
Sections 35.104, 35.107, 35.170(a)

Per California Government Code
Section 11135

Declarations
on ADA and Section 504
Meaningful Access to Justice

Participants and Issues in Conservatorship Proceedings

Appointing an Attorney is Required by the ADA, Section 504, and Section 11135 to Ensure that Respondents with Cognitive Disabilities Have Access to Justice



Respondents with cognitive disabilities lack the ability to represent themselves in conservatorship proceedings. Appointing an attorney is a necessary accommodation under the Americans with Disabilities Act to enable respondents to have meaningful participation their case. Once appointed, counsel must provide *effective* advocacy services. To ensure effective assistance of counsel, courts must adopt ADA-compliant performance standards, require proper training of attorneys, and create methods to monitor their actual performance. The duty of the courts regarding appointment, training, and monitoring of appointed attorneys stems from due process, the ADA, Section 504 of the Rehabilitation Act, and Gov. Code Section 11135.

Effective advocacy services include: reviewing the allegations of the petition and supporting documents, examining capacity assessments in all areas of decision making, determining whether less restrictive and safe alternatives are viable, vetting the proposed conservator, insisting on a care plan that provides safety and reduces the risk of abuse, and making sure that the judge, petitioner, court investigator, capacity experts, and conservator follow statutory directives. Most conservatorship respondents are unable to perform these essential functions without a court-appointed attorney. Many lack the capacity to request or waive an attorney.

** Constitutional rights include intimate association (sex), the rights to travel, marry, contract, and vote, and the freedom of choice in personal decisions. ** Major life decisions include choices regarding residence, occupation, education, medical care, social life, finances, etc.*

Thomas F. Coleman, Legal Director, Spectrum Institute

www.spectruminstitute.org/outreach • tomcoleman@spectruminstitute.org

Meaningful Participation and Effective Communication by a *Pro Per* Respondent in a Conservatorship Case

A respondent who represents himself or herself would need to be able to perform the following tasks in order to have meaningful participation and effective communication in a conservatorship proceeding:

1. Review the petition and moving papers.

The respondent would *need to be able* to read the allegations in the petition and the information in related documents (or have the papers read to them by someone else who does not have a conflict of interest) to determine whether the information is true. This would require the respondent to understand the meaning of the words and sentences used in these documents.

2. Respond to the petition and moving papers.

The respondent would *need to be able* file paperwork with the court to point out any areas where information is not true. This would require the respondent to be able to articulate words that convey any objections that may exist to the facts that have been alleged.

3. Review and respond to the capacity declaration.

The respondent would *need to be able* to evaluate the information contained in the medical capacity declaration filed by the doctor who presumably examined him or her. This would require the ability to understand technical medical words and concepts. It would also require the ability to determine if the examination was done properly. The respondent would need to have the ability to call the doctor on the phone to discuss the evaluation process and to question the opinions contained in the declaration.

4. Challenge sufficiency of petitioner's evidence.

The respondent would *need to be able* to understand the concept of "clear and convincing evidence" and make an informed decision about whether the allegations in the petition – and evidence produced by the petitioner – meets this standard on each and every legal element necessary for the issuance of a conservatorship order.

5. Develop an affirmative defense.

The respondent would *need to be able* to present evidence that a conservatorship is not needed, that there is a lesser restrictive alternative, that capacity to make decisions exists in some of the relevant areas (financial, medical, residence, marital, social, sexual, etc), there is a better choice of who should be conservator, that petitioner has ulterior motives in initiating the proceeding, that the proposed conservator has been or would be abusive, etc. The respondent would need to be able to call witnesses, to present evidence, and to cross-examine the petitioner's witnesses to challenge their assertions.

6. Call expert witnesses.

The respondent would *need to be able* to ask that an independent expert be appointed to develop an affirmative defense that respondent has capacity in one or more areas.

7. Demand contested hearing and jury trial.

The respondent would *need to be able* to decide whether to demand a contested hearing and if so, whether also to demand a jury trial.

8. Insist on due process.

The respondent would *need to be able* to know what statutory and constitutional protections exist and to insist that the judge and other participants follow the law.

9. Waive rights.

In order to forego the procedures listed above, the respondent would *need to be able* to make a knowing and voluntary waiver of these rights and be able to communicate the waiver of each of them to the court.

The appointment of counsel is a way to ensure meaningful participation and effective communication by a respondent in a conservatorship case.

Declaration of Nora J. Baladerian, PhD.

I, Nora J. Baladerian, state:

1. I am a psychologist licensed by the State of California. In my clinical practice, I provide therapy to individuals with intellectual and developmental disabilities. I have been providing therapy to clients with such disabilities for more than three decades.
2. I have studied the abilities and disabilities of this population for more than four decades. I have read numerous books and articles on the ability of people with intellectual and developmental disabilities to understand and to communicate. I have attended numerous conferences and seminars on these topics.
3. I have taken advanced training on forensic interviewing of people with intellectual and developmental disabilities. Based on my academic, clinical, and forensic experience, I have been called as an expert witness involving litigants with such disabilities. I have also been called upon to make presentations to protective services workers, law enforcement officers, and service providers regarding effective communication with people who have such disabilities.
4. I have become familiar with several people with such disabilities who have been respondents in conservatorship proceedings in California. In the process of examining their role in these cases, I became familiar with what they were able to do and not do in terms of understanding the proceedings and communicating with others involved in the proceedings.
5. I have received awards from the Attorney General of the United States and the American Psychological Association for my professional service to people with intellectual and developmental disabilities.
6. I have read the article titled "Meaningful Participation and Effective Communication by a *Pro Per* Respondent in a Conservatorship Case." I have also read the letter sent by Alta California Regional Center to Spectrum Institute regarding the high percent of clients who are drawn into conservatorship proceedings who are not provided an attorney to represent them.
7. It is my professional opinion that: (a) the overwhelming majority of conservatorship respondents with intellectual and developmental disabilities would not be able to effectively perform any of the nine tasks listed in the "pro per" article; and (b) without the assistance of competent counsel, the disabilities of these individuals would prevent them from having meaningful participation and effective communication in these legal proceedings.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Palm Springs, California on August 3, 2018.



Nora J. Baladerian, Ph.D.
555 S. Sunrise Way, Suite 205
Palm Springs, CA 92264
(760) 699-7135
www.norabaladerian.com

Declaration of Angela M. Kaufman

I, Angela M. Kaufman, state:

From (11/17/97) to (5/11/2012) I worked for the City of Los Angeles Department on Disability in the ADA Compliance Division as a Project Coordinator.

From (5/12/12 to 11/ 2017) I was the ADA Compliance Officer for the City of Los Angeles.

As a part of my duties I was responsible to oversee the City of Los Angeles' compliance with Title II of the Americans with Disabilities Act (ADA), § 504 and § 508 of the Rehabilitation Act and other federal and state disability laws as they applied to local government.

In addition, I ensured that all City programs, services and activities were both physically and programmatically accessible to persons with disabilities, including individuals with intellectual and developmental disabilities.

Additionally, I administered the auxiliary aids and services contracts for the City and provided consultation to the Mayor, City Council, City Attorneys Office and all City departments related to assuring programmatic access to persons with disabilities in the City of Los Angeles.

I provided technical assistance to City departments with evaluating and assessing the needs of children and adults with various types of disabilities to determine the necessary provision of reasonable accommodation, policy modification, and/or auxiliary aids and services necessary to allow persons with disabilities to participate in and benefit from the City's programs, services and activities.

In addition to people with mobility and/or physical disabilities; deaf, hard or hearing, or deaf/blind; blind and visual disabilities;

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mental health disabilities; and speech disabilities, I also evaluated people who had cognitive disabilities, including children and adults with intellectual disabilities and developmental disabilities – such as Down syndrome, autism, and cerebral palsy.

I have provided support to families with children who are deaf and I/DD during Regional Center Fair Hearings to advocate for services and acceptance into programs as children who are Deaf and I/DD are initially evaluated by staff through sign language interpreters who may not be qualified to interpret the assessment, staff who have no understanding of deafness, American Sign Language, or deaf culture, and are often declined services referencing hearing loss and lack of English as the primary issue, and not identifying the I/DD issues.

I am also a nationally certified sign language interpreter and have on many occasions interpreted for children and adults who are deaf as well as I/DD.

I have participated in conferences sponsored by Spectrum Institute about conservatorship proceedings in California. I have also had numerous discussions about these proceedings, especially as they relate to people with intellectual and developmental disabilities, with Dr. Nora J. Baladerian and attorney Thomas F. Coleman.

I have read the article titled “Meaningful Participation and Effective Communication by a Pro Per Respondent in a Conservatorship Case.”

Based on my years of experience in evaluating, assessing and working directly with people with disabilities for the provision of auxiliary aids and services to allow them to participate in, and have equal access to government services, and based on my knowledge about the complexities of conservatorship proceedings, and based on the list of activities that self represented respondents would need to perform in order to have meaningful participation in and

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effective communication during these proceedings, it is my opinion that the overwhelming majority of such litigants would not have such participation and communication without the appointment of competent counsel and the provision of other accommodations that may be needed by the litigant.

In my professional opinion, each litigant in these complex court proceedings should be provided competent counsel (one who has had training in working and communicating with persons with disabilities) and have a communication assessment to ensure that the appropriate auxiliary aids and services are provided in order for the litigant to be able to communicate effectively with counsel and other participants in the proceedings, and to understand what is happening in their case.

Additionally, an individualized assessment of each proposed conservatee would need to be conducted to determine their ability to self-represent.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Los Angeles, California on August 6, 2018.

A handwritten signature in black ink, appearing to read 'Angela M. Kaufman', written over a horizontal line.

Angela M. Kaufman

PO Box 280248
Northridge, CA 91328
(818) 422-0806

Declaration of Barbara Imle

I, Barbara Imle, declare:

1. I worked for several years for two regional centers in California, during which time I had extensive experience with and interaction with adults who have developmental disabilities -- especially and including those who were served with probate conservatorship petitions and who were therefore required to participate in such proceedings.
2. During my time at these regional centers, I became very familiar with conservatorship proceedings. I also became aware of the many activities that anyone defending their rights in such proceedings would need to do.
3. I have read the document titled "Participants and Issues in Conservatorship Proceedings" and the document titled "Meaningful Participation and Effective Communication by a *Pro Per* Respondent in a Conservatorship Case" – both of which are part of the declarations packet submitted to the superior court in connection with the ADA complaints filed by Spectrum Institute.
4. Based on my knowledge of what meaningful participation in a conservatorship proceeding would entail, and on my experience in evaluating regional center clients involved in such proceedings, it is my opinion that most proposed conservatees with developmental disabilities would not be able to effectively represent themselves in such proceedings.
5. Furthermore, based on my experience in dealing with proposed conservatees who have developmental disabilities, it is my professional opinion that most proposed conservatees with developmental disabilities would not have meaningful participation and effective communication in their cases without the assistance of a competent attorney.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct. Executed at Portland, Oregon, August 11, 2018.



Barbara Imle

Declaration of Anthony Chicotel, Esq.

I, Anthony Chicotel, state:

1. I am an attorney licensed by the State of California. For the last twelve years, I have worked as a staff attorney for California Advocates for Nursing Home Reform (CANHR). My primary roles at CANHR include counseling and representing long term care consumers and advocating for statutory and regulatory policy improvements. My areas of expertise include nursing home residents rights, dementia care, capacity and decision making, and conservatorships.
2. Prior to working at CANHR, I was a rights attorney for older residents of San Diego and Imperial Counties at Elder Law & Advocacy, a legal services organization. I saw over 1,000 clients annually regarding a wide variety of legal subjects, including conservatorship. Representing proposed conservatees in conservatorship cases was part of my practice.
3. My first job as an attorney was representing people with alleged mental disabilities for Nevada Disability Advocacy and Law Center. I represented clients in civil commitment and forcible administration of medication hearings and counseled clients facing adult guardianship proceedings.
4. In 2010, I wrote "Conservatorship Defense Guide" for attorneys representing conservatees in the California court system. Around that same time, I reviewed the files of 300 conservatorship cases throughout California to gather data and evaluate the conservatorship process from a statewide perspective.
5. I consider myself an expert in the areas of decision making capacity and competency, both the legal standards and assessing clients. I am very familiar with conservatorship proceedings and the cognitive resources required to meaningfully participate in a conservatorship case as a conservatee.
6. I have read the article titled "Meaningful Participation and Effective Communication by a Pro Per Respondent in a Conservatorship Case." The article effectively summarizes the functions that a proposed conservatee would need to perform to effectively participate in a conservatorship proceeding. These functions are generally performed by counsel when counsel is appointed.
7. Based on my experience, it is my professional opinion that most proposed conservatees in general conservatorship proceedings suffer from a significant cognitive disability and would not be able to effectively perform any of the tasks listed in the "pro per" article. Without the assistance of competent counsel, the disabilities of these individuals would prevent them from having meaningful participation and effective communication in these legal proceedings.

I declare under penalty of perjury that the foregoing is true and correct. Executed at San Francisco, California on August 13, 2018.



Anthony Chicotel
California Advocates for Nursing Home Reform
650 Harrison St., 2nd Floor
San Francisco, CA 94107
(415) 974-5171 / www.canhr.org