

Before the
United States Department of Justice
Civil Rights Division

Disability and Abuse Project of Spectrum Institute
as next friend of limited conservatees under the
jurisdiction of the Los Angeles Superior Court,

Complaining Party,

and

Los Angeles Superior Court,

Violating Party.

Complaint for Violations of
Civil Rights Protections
42 U.S.C. 1973aa
(Literacy Tests)
42 U.S.C. 1973aa-6
(Disability Accommodations)
42 U.S.C. 12132
(Modifications of Policy)
29 U.S.C. 794(a)
(Section 504 Discrimination)

1. This complaint is being filed by the Disability and Abuse Project of Spectrum Institute on behalf of adults with developmental disabilities who are under the jurisdiction of the Los Angeles Superior Court as limited conservatees and who have been disqualified from voting by order of that court or who may be so disqualified in future cases.
2. Most of these limited conservatees do not have attorneys because the appointment of the attorneys who represented them when their cases were first filed was terminated when an order was issued granting the petition for limited conservatorship. Furthermore, it was often the conduct of their attorneys (appointed by the court, paid by the court, and instructed by the court on how to perform their services) that caused or substantially contributed to the loss of their voting rights (as described below).
3. As individuals and as a class, these limited conservatees are not able to file a complaint on their own for voting rights violations because: (1) they have cognitive and communication disabilities that limit their ability to understand and communicate; and (2) they and their families have no idea that the conduct of the judges, attorneys and others in their cases violated federal voting rights laws.
4. The Disability and Abuse Project has acquired information about voting rights violations and illegal policies and practices of the Los Angeles Superior Court that places this organization in a unique position to seek remedial and corrective action on behalf of these individuals and this class.
5. Spectrum Institute is a nonprofit corporation that engages in education and advocacy to protect the rights of people with developmental disabilities. The Disability and Abuse Project is a function of Spectrum Institute. The project has recently focused its attention on myriad violations of the legal rights of adults with developmental disabilities who come into contact with the Limited Conservatorship System in California, especially as it is operated by the Los Angeles Superior Court.

6. The Disability and Abuse Project has created a Conservatorship Reform Project, the purpose of which is to reform adult guardianship and conservatorship laws so that the legal rights of people with developmental disabilities are more fully protected. Our initial focus is on California.
7. The Conservatorship Reform Project has engaged in hundreds of hours of research, interviews, consultations, and conferences to identify the various ways in which the Limited Conservatorship System in California, especially as it is operated by the Los Angeles Superior Court, is violating and has been violating the rights of limited conservatees.
8. We have discovered many policies and practices of agencies and individuals who operate the Limited Conservatorship System that routinely violate the constitutional and statutory rights of proposed limited conservatees as well as actual limited conservatees (those who have been placed under limited conservatorship pursuant to a court order). Many of these policies and practices are identified and described in some detail in a report titled *Justice Denied*. A digital version of that report can be found on our website at www.disabilityandabuse.org.
9. The issue of voting rights, and details of how the Limited Conservatorship System is violating those rights, especially as operated by the Los Angeles Superior Court, is contained in a report titled *Voting Rights*. A copy of that report is submitted with this complaint.
10. The *Voting Rights* report and the problems described therein were the focus of a conference that was held on June 20, 2014 in Los Angeles. Among the invited guests who participated in that conference were representatives from the California Secretary of State, California Department of Developmental Services, Los Angeles County Registrar of Voters, City of Los Angeles Department of Disability, and Bet Tzedek. The Los Angeles Superior Court and the Los Angeles County Bar Association were also invited but did not send a representative.
11. Solutions and remedies were discussed at the Voting Rights Conference. Many participants stated that one of the best approaches would be to file a complaint with the Civil Rights Division of the United States Department of Justice. None of the participants objected to this approach.
12. The policies and practices mentioned in this complaint that violate the voting rights of limited conservatees have been brought to the attention of judges and employees of the Los Angeles Superior Court, including the Presiding Judge of the Probate Court and the Chief Investigator of the Probate Court.
13. Bet Tzedek Legal Services and the Los Angeles County Bar Association have been notified about how the way in which they conduct their services helps to create these voting rights violations. Both of these organizations play a significant role in the operation of the Limited Conservatorship System. Their activities are performed under contract with the Los Angeles Superior Court and with the court's advance approval and subsequent ratification. Because of their formal connections with the Los Angeles Superior Court, these organizations operate their services in connection with limited conservatorships under color of state law.
14. The Los Angeles Superior Court processes about 1,200 new limited conservatorship petitions

each year. About 90 percent of these cases are initiated by petitioners who do not have attorneys. Most of these petitioners are directed by the court to the Self-Help Conservatorship Clinics operated by Bet Tzedek inside of courthouses as well as group seminars that organization conducts elsewhere.

15. In every new filing, the court appoints an attorney to represent the proposed conservatee. These attorneys are known as PVP attorneys (Probate Volunteer Panel). Each of these attorneys receives mandatory training conducted by the Los Angeles County Bar Association. These trainings are done at the direction of and with the approval of the Los Angeles Superior Court. More than 200 attorneys attended the most recent Mandatory Training/Refresher seminar.

16. Limited conservatorship cases generally remain “open” until the limited conservatee dies. Since many of these conservatorships are initiated when the adult turns 18, cases might remain open for 40 years or longer. Although the exact number of open limited conservatorship cases in Los Angeles County is not known to the Disability and Abuse Project, we believe there are many thousands of limited conservatorship cases in which petitions have been granted and in which there is not an order terminating them or dismissing them. We consider these to be “open” cases. (We believe there are tens of thousands of open limited conservatorship cases in California.)

17. The issue of voting rights violations, contrary to federal law, first came to our attention in a specific case processed by the Los Angeles Superior Court. A mother, Teresa Thompson, Ph.D., inquired about the right of her adult son to vote and whether that right would be taken away if a petition for limited conservatorship were granted.

18. Our investigation into that case revealed that her son’s court-appointed attorney told Dr. Thompson that voting was contrary to the concept of conservatorship. The attorney filed a report with the court declaring that his client “is not” able to complete an affidavit of voter registration. The attorney knew that if the court accepted his declaration to be true that his client would lose his right to vote.

19. Dr. Thompson reported to me that she had attended a workshop conducted by Bet Tzedek, and based on the prompting given at that session, she had checked off the box indicating that her son “is not” able to complete an affidavit of voter registration. She was not informed by anyone, nor did she know from any source, the significance of checking off that box.

20. That case prompted me do a mini-audit of a block of 61 limited conservatorship cases that had recently been processed through the Los Angeles Superior Court, to see what had occurred in those cases regarding voting rights. I looked at the court orders, the petitions, and the PVP reports of the court-appointed attorneys to see what had been stated regarding voting. In nearly 90 percent of the cases, the judge entered a finding that the limited conservatee is not able to complete an affidavit of voter registration and based on that finding the judge ordered the conservatee disqualified from voting. The judge’s finding and order were based on allegations in the petition and in the PVP report that the adult “is not” able to complete the voter registration form. If the petition and the PVP report did not contain such an allegation, the judge would have had no basis for such an order and therefore would not have disqualified these individuals from voting.

21. I recently attended a Mandatory Training/Refresher seminar for PVP attorneys authorized by the Los Angeles Superior Court and conducted by the Los Angeles County Bar Association. More than 200 PVP attorneys attended the seminar. No mention was made of federal voting rights laws. The attorneys were told by a judge that proposed limited conservatees will lose their voting rights if they are unable to complete a voter registration form on their own accord. The judge did not mention disability accommodation laws. He specifically stated that a mother could not help her son by filling out the registration form for him.

22. I reviewed materials from a prior PVP training and found no mention of voting or voting rights. It is my belief that the PVP attorneys who represent limited conservatees and the judges who hear these cases in Los Angeles County have not received any formal training on voting rights in general or on federal voting rights laws in particular.

23. I have reviewed California statutes dealing with the voting rights of conservatees. California law uses a test to determine whether a conservatee will keep or lose voting rights. The test is whether the conservatee is able or is not able to complete an affidavit of voter registration. One statute makes a vague reference to someone assisting a person in completing the registration form, but that statute does not directly negate the several other statutes stating that if the conservatee is not able to complete the registration form then the conservatee is “incompetent” and is therefore disqualified from voting.

24. The petition for limited conservatorship asks the petitioner to state whether the proposed conservatee can pass the test, namely, are they able or not able to complete the voter registration form. The PVP report asks the court-appointed attorney to state whether the client can pass this test. The order has a place for the judge to make a factual finding on whether the conservatee can pass this test, and if not, there is place for the judge to check a box disqualifying the conservatee from voting. The petition and the order are forms mandated by the Judicial Council of the State of California. The PVP report is a form created by the Los Angeles Superior Court.

25. If the mini-audit I did of the 61 cases is any indication of what has been happening on a larger scale in Los Angeles County, it is reasonable to conclude that thousands of limited conservatees have been improperly disqualified from voting by order of the Los Angeles Superior Court.

26. Several times each year, the Los Angeles Superior Court transmits to the County Registrar of Voters lists of the names of conservatees who have been ordered disqualified to vote because a judge had determined that they could not pass the test for voter registration described in this complaint.

27. These disqualification orders are illegal for several reasons: (1) the court is using a test or device to determine qualifications for voting in violation of federal law; (2) the court and the court-appointed attorneys are ignoring federal laws that allow a person with a disability to have someone assist them in filling out voting paperwork; (3) the limited conservatees are being denied due process of law because the judges are ignoring federal voting rights laws; and (4) the limited conservatees are being denied their right to effective assistance of counsel because PVP attorneys are either ignoring federal voting rights laws or they have been misadvised on disability accommodation laws at PVP trainings, or both.

28. These policies and practices violating the voting rights of limited conservatees in Los Angeles County have been brought to the attention of: The Chief Justice of the Supreme Court, the Judicial Council, the Attorney General of California, the chairs of the Judiciary Committees of both houses of the Legislature, the State Department of Developmental Services, the California Secretary of State, the Los Angeles County Registrar of Voters, the Presiding Judge of the Probate Division of the Los Angeles Superior Court, Bet Tzedek, and the Los Angeles County Bar Association.

29. The Chief Justice referred our request for a statewide Task Force on Limited Conservatorships to the Judicial Council for review. Although the issue of voting rights was mentioned in our request, that issue was part of a much larger set of issues about the Limited Conservatorship System. The Judicial Council referred our request for a Task Force it to a Committee for review and recommendation. The Probate and Mental Health Advisory committee is scheduled to consider the request at a private meeting on July 11, 2014.

30. I was advised by a staff member for the Probate and Mental Health Advisory Committee that there are various options for that Committee. It could recommend against the formation of a Task Force on Limited Conservatorships. It could refer that matter to a sub-committee for further study. It could also vote for a favorable recommendation. However, I was informed by the staff member that due to administrative procedures and various scheduling deadlines, even under the best case scenario, the soonest that the Judicial Council would create a Task Force would be December 2015. This means that a study of the issues, including the voting rights violations, would not even *begin* until January 2016 at the earliest.

31. The prototype for this type of a statewide Task Force is a similar study group that was created in 2006 in response to a series of stories published by the Los Angeles Times about improprieties in the general conservatorship system that mostly processes cases involving elderly people. That study lasted about one year before recommendations were made by it to the Judicial Council and changes in court rules and new legislation did not occur for another year. Based on that model, if a Task Force on Limited Conservatorships began to study these issues, including the voting rights issues, in January 2016, a report would be issued in January 2017 and new rules and legislation, if enacted would not occur until January 2018.

32. People with developmental disabilities who have lost their voting rights due to illegal actions by the Los Angeles Superior Court should not have to wait until 2018 for relief. Limited conservatees whose cases are processed through the Superior Court in the next three years should not be placed at risk of losing their voting rights due to the slow response of the Judicial Branch in California to the issues that have been brought to its attention.

33. The Attorney General has not responded to our letter or to the *Justice Denied* report. Even though the Attorney General's office was invited to the Voting Rights Conference, a representative from that agency did not attend. An attorney from the Civil Rights Section did offer to have a conversation with me about the conservatorship process, but there is no indication whether the Attorney General's office will become involved in reviewing any of our complaints about the Limited Conservatorship System. The Attorney General has no direct involvement with that system.

34. The Secretary of State did send a representative to our Voting Rights Conference and she was very sympathetic to our complaints. However, there are practical limitations as to what that office can do at this time. The current office holder will be “termed out” this year and will be replaced by someone who will be elected this November. As a result, we do not expect that office to take any significant action on this problem in the next few months. Furthermore, the Secretary of State has no jurisdiction over the Los Angeles Superior Court.

35. The State Department of Developmental Services received a copy of *Justice Denied* and *Voting Rights*, and a letter requesting a meeting to discuss what that Department might do in the future to help correct the myriad problems with the Limited Conservatorship System. We have not received a response to those reports or our request for a meeting. However, we are pleased that the Department did send a representative to the Voting Rights Conference on June 20.

36. The Presiding Judge of the Probate Division of the Los Angeles Superior Court has received our reports but has not responded to them other than indicating that he has read them. We believe that nothing significant will change with the policies and practices of the Superior Court (including the practices of Bet Tzedek and the Los Angeles County Bar Association which operate under contract with the court), or by the PVP attorneys it appoints to cases, without intervention by the United States Department of Justice.

37. The Los Angeles County Registrar of Voters has been notified by our Project that the orders of the Superior Court disqualifying limited conservatees from voting are legally suspect because: (1) the judges are using a test to determine whether proposed conservatees are qualified to register or not and that we believe the test violates federal voting rights laws; (2) petitioners are being prompted by Self-Help clinics to check off a box that triggers such a judicial finding; court-appointed attorneys are being given incorrect information about voter eligibility in their training programs; (3) and that court-appointed attorneys are violating ethics and professional standards by disclosing to the court information they receive in confidence about the ability of their clients to complete an affidavit of voter registration. The Registrar of Voters does not have legal authority to ignore the orders of the court on voter disqualification of limited conservatees and must keep such conservatees on a disqualified list until that agency receives an order from the court rescinding the prior order.

STATUTORY VIOLATIONS

38. The policies and practices of the Los Angeles Superior Court, as implemented by its judges, employees, and nonprofit agencies it contracts with and delegates activities to, are in direct violation of the following federal statutes and regulations: (See Exhibit 2)

- a) Voting Rights Act of 1965 – Literacy Tests – 42 U.S.C. 1973aa
- b) Voting Rights Act of 1965 – Voting Assistance – 42 U.S.C. 1973aa-6
- c) Americans with Disabilities Act – Discrimination – 42 U.S.C. 12132
- d) Attorney General Regulation – Reasonable Modifications – 28 C.F.R. 35.130(a)
- e) Rehabilitation Act of 1973 – Discrimination – 29 U.S.C. 794(a)

REQUEST FOR RELIEF

On behalf of current limited conservatees under the jurisdiction of the Los Angeles Superior Court who are not able to seek relief on their own, and proposed limited conservatees whose cases will be processed by that court in the future, we request that the United States Department of Justice:

- A) Investigate the allegations of this complaint, and review all exhibits submitted with it; and
- B) Instruct the Los Angeles Superior Court to make reasonable modifications of its policies and practices, and instruct its judges, employees, and contracting agencies, to do the same, to eliminate discrimination on the basis of disability from voter eligibility assessments and to discontinue using any test or device in determining whether a person is eligible to vote or register to vote.

Future Cases:

- C) Instruct the court to cease and desist from using the test of whether a limited conservatee is or is not able to complete an affidavit of voter registration in determining whether the limited conservatee will retain or lose the right to vote;
- D) Instruct the Superior Court to inform Bet Tzedek (as agent of the court) that such a test can not be used;
- E) Instruct the Superior Court to inform the Los Angeles County Bar Association (as agent of the court) of the same and to inform the Bar Association to include information on federal voting rights laws in its trainings of PVP attorneys;
- F) Instruct the Superior Court to remove the test from the form for PVP attorney reports;
- G) Instruct the Superior Court to seek the modification of forms by the Judicial Council so that the petition and order forms no longer contain language regarding the federally-prohibited test;

Past Cases:

- H) Instruct the Superior Court to issue a general order vacating orders of voter disqualification in limited conservatorship cases over the past 10 years because the specific orders in those cases were issued due to mistake or neglect and are in conflict with federal voting rights laws.
- I) Alternatively, instruct the Superior Court to take action, on its own motion, to review each voter disqualification case individually and rescind disqualification orders individually, for cases where such orders have been issued during the past 10 years;

- J) Instruct the Superior Court to rescind and recall voter-disqualification notices it has sent to the Registrar of Voters over the past 10 years and to notify the Registrar that the court is recalling and rescinding transmissions from the court of lists of disqualification it has sent to the Registrar Periodically during the past 10 years.
- K) Instruct the Superior Court to notify individuals who have been the subject of voter disqualification orders over the past 10 years that those orders have been rescinded and that their voting rights have been restored.

Other:

If these steps are not taken by the court with all deliberate speed, the Department of Justice should take appropriate legal action against the Los Angeles Superior Court to remedy past violations of federal voting rights laws and to prevent future injustices to people with developmental disabilities who are limited conservatees.

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Respectfully submitted:



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