

## Social Rights Protection: A Case Study

The Disability and Abuse Project is initiating a case study to be used in an educational program focusing on the social rights of people with developmental or intellectual disabilities.

The case study involves an audit of *In re Gregory D.*

This limited conservatorship proceeding was brought to our attention by a published opinion of the California Court of Appeal which concluded that a parent does not have the right to appeal from an order the parent believes infringes on the constitutional rights of an adult child with a developmental disability.

The substantive issue raised in the appeal concerned orders by the probate court that allegedly violated the fundamental constitutional rights of Gregory D, an adult with a developmental disability.

At issue was Gregory's right to make his own social decisions. The probate court issued an order declaring that the father had a right to ongoing visits with Gregory. The order did not acknowledge Gregory's right to decline such visits or to terminate them at will. The order also directed Gregory's paid caregivers to pressure him to be available for visits by the father. The source of the father's so-called right to visit an adult child was not identified by the order. The mother appealed because she believed the order unduly infringed on Gregory's freedom of association.

The Court of Appeal did not address this issue because the appeal was dismissed on procedural grounds.

The Disability and Abuse Project has decided to analyze this issue in greater detail, since similar cases have been brought to our attention over the past year. The restriction of social rights of people with disabilities is a recurring problem.

We believe that conservators should not be given the power to control social decisions of an adult with developmental disabilities, except in the most limited situations, and even then only to prevent clear harm from occurring to a limited conservatee. A conservatee should never be required, or pressured, to visit with someone that he or she does not want to visit.

We also believe that attorneys appointed to represent adults with developmental disabilities should vigorously defend the client's social decision-making rights and should not stipulate to court orders that have the potential for infringing on such rights.

Furthermore, we believe that judges presiding in limited conservatorship proceedings should protect a conservatee's right to make social decisions; if an order is issued that has the potential to restrict such rights, the judge should advise the conservatee, on the record, of his or her right to decline visitation with anyone on any occasion. The conservatee should also be advised, on the record, that if a visit is initiated with his or her consent, the conservatee has the right to end the visit at any time and to be returned to his or her residence as soon as reasonably possible.

We have chosen the *Gregory D.* case as a model for education and training of judges, attorneys, and conservators.

We will be auditing this case -- current, past, and future records and proceedings -- to evaluate the process as well as the performance of everyone involved in the proceedings. We believe that lessons can be learned from this specific case which can inform others who may participate in other limited conservatorship cases in the future.

Our social rights protection program will reach out to probate court judges in California as well as administrators operating training programs for court-appointed attorneys. We will also share our findings and recommendations with the California Association of Public Administrators, Public Guardians, and Public Conservators. Our educational materials also will be given to the Professional Fiduciary Association of California.

Disability and Abuse Project

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