

# **Conservatorship in Crisis: Civil Rights Violations & Abuses of Power**

**Linda Kincaid, MPH  
Introduction to American Law  
De Anza College  
December 2012**

The author compiled case studies during 2010-2012 elder advocacy activities. Research on the Probate Code, conservatee's rights, and resident's rights was conducted as part of advocacy activities. Research on case law and constitutional aspects of conservatorship was conducted specifically for Introduction to American Law (PARA 95). All opinions and conclusions are solely those of the author.

# Conservatorship in Crisis

## Table of Contents

Executive Summary.....	3
Introduction to Probate Conservatorship.....	4
Conservatorship’s Intended Role.....	6
Conservatorship’s Checkered Past: Case Law & Media Coverage.....	7
Conservatorship’s Darker Side: Case Studies.....	11
Carol Hahn (San Bernardino County).....	11
Gisela Riordan (Santa Clara County).....	12
Lillie Scalia (Santa Clara County).....	13
George and Maria Jordanou (San Joaquin County).....	15
Mental Abuse, Confinement, and Isolation.....	16
No Remedy through Department of Social Services.....	21
Carol Hahn.....	21
Gisela Riordan & Lillie Scalia.....	22
Maria Jordanou.....	22
Response from Department of Social Services.....	22
No Remedy through Law Enforcement or Criminal Court.....	24
Carol Hahn.....	24
Gisela Riordan & Lillie Scalia.....	25
No Remedy in Civil Court.....	27
Conservatorship and Civil Rights in Conflict.....	28
Conservatorship’s Dark Future.....	31
Bibliography.....	32

# Conservatorship in Crisis

## Executive Summary

*The moral test of government is how it treats those who are in the dawn of life, the children; those who are in the twilight of life, the aged; and those in the shadows of life, the sick, the needy and the handicapped.*

Hubert H. Humphrey

California is failing its elders and disabled adults. This paper discusses the checkered history of California conservatorship. Courts provide inadequate oversight, statutes fail to curb abuse, and case law fails to curb abuse. Apathetic law enforcement and negligent social services agencies set the stage for rampant abuse by conservators. Conservatees are routinely denied their most basic civil rights.

- Deprived of property
- Deprived of liberty
- Denied their right to trial
- Denied their right to counsel
- Denied their right to confront their accusers
- Confined and isolated

Case studies demonstrate the lack of remedy available to victims of abusive conservators. In the cases presented, remedies for abuse were not available through Department of Social Services, law enforcement, criminal court, or civil court. In some cases, the only escape from conservatorship is death.

# Conservatorship in Crisis

## Introduction to Probate Conservatorship

As the population ages, a growing number of elders require assistance with managing their affairs. The general probate conservatorship is a legal instrument authorizing a third party to manage an individual's personal and financial matters. In October 2012, Aging and Adult Services Director Lee Pullen told ABC7 News<sup>1</sup> that Santa Clara County, California now oversees about 800 conservatorships.

The overarching duty of a conservator is to act in the best interest of the conservatee. The California Probate Code provides guidance on appropriate actions. The *Handbook for Conservators* (Administrative Office of the Courts, 2002) goes into considerable detail on day to day management of the conservatorship. Both Probate Code and the *Handbook* strive to protect a conservatee's rights by limiting the role of the conservator to actions that are in the best interest of the conservatee and that are truly necessary.

Although the goal of conservatorship is to protect the conservatee, the system often fails. Those failures can lead to gross violations of basic civil rights. We will examine cases in which conservatorship has been used to violate the rights of conservatees for convenience of the conservator or for the financial gain of the conservator. There is essentially no recourse for conservatees whose rights are violated. There is very little recourse for family members striving to protect loved ones abused by conservators.

We will first examine the laudable intent of conservatorship and the equally laudable efforts to protect the rights of conservatees. Unfortunately, the realities of conservatorship fall short of the intent. Second, we will examine case studies that demonstrate blatant violations of

---

<sup>1</sup> Dan Noyes, *ABC I-Team investigates South Bay Public Guardian*

## **Conservatorship in Crisis**

conservatee's rights, sometimes under color of law. Those cases were drawn from court records, police reports, deposition transcripts, Community Care Licensing Complaint Investigation Reports, and personal interviews. Third, we will discuss the lack of remedy through Department of Social Services, law enforcement, in criminal court, or in civil court. Last, we will examine how the Probate Code and the Probate Court may serve to deny conservatees and proposed conservatees their civil rights guaranteed under the California Constitution.

## Conservatorship in Crisis

### Conservatorship's Intended Role

Probate Code 1801<sup>2</sup> defines a conservator of the person and conservator of the estate. Under the Code, a conservator of the person is only appointed when an individual is unable to provide for his personal needs with or without assistance from family and friends. A conservator of the estate is only appointed when an individual is substantially unable to manage his financial affairs. A condition such as advanced dementia would be an indicator for appointing a conservator of the person and of the estate.

The *Handbook for Conservators*<sup>3</sup> presents the concept of conservatorship in simple language, "A conservator is a person or organization chosen to protect and manage the personal care or finances, or both, of someone who has been found by a judge to be unable to do so." In *Conservatorship of Stewart*<sup>4</sup> the court held, "The sole purpose of a conservatorship is to provide a competent person to act, under the guidance of the probate court, as the agent of the conservatee." Both sources are clear that the role of the conservator is limited in scope, and the function of the conservator is to act in the interest of the conservatee.

At no point in the Probate Code, the *Handbook for Conservators*, or in case law is there an implication that conservatorship is a license to violate the civil rights of the conservatee or to profit at the expense of the conservatee. At no point is there any indication that a conservator is not subject to laws prohibiting elder abuse or fraud.

---

<sup>2</sup> Probate Code 1801(a) A conservator of the person may be appointed for a person who is unable to provide properly for his or her personal needs for physical health, food, clothing, or shelter....  
(b) A conservator of the estate may be appointed for a person who is substantially unable to manage his or her own financial resources or resist fraud or undue influence....

<sup>3</sup> *Handbook for Conservators* (2002) Judicial Council of California

<sup>4</sup> *Conservatorship of Stewart* (1969) 276 Cal.App.2d 211 [80 Cal.Rptr. 738]

## Conservatorship in Crisis

### Conservatorship's Checkered Past: Case Law & Media Coverage

There is a dearth of case law on probate conservatorships, in part due to difficulties facing a conservatee or family member wishing to oppose an abusive conservatorship. However, in a 1979 landmark case on LPS<sup>5</sup> (mental health) conservatorships, the Supreme Court of California held in *Conservatorship of Roulet*<sup>6</sup> that a conservatorship trial must apply the reasonable doubt standard and require a unanimous jury decision, as required in criminal trials. A preponderance of evidence and agreement of nine of twelve jurors, as required in civil trials, is not adequate to deprive a person of liberty. “The appointment of a conservator for appellant and her subsequent confinement in a mental hospital against her will deprived appellant of freedom in its most basic aspects and placed a lasting stigma on her reputation.” The Supreme Court of California looked to the U.S. Supreme Court for guidance, “commitment is a deprivation of liberty. It is incarceration against one’s will, whether it is called ‘criminal’ or ‘civil’<sup>7</sup>”. In a subsequent opinion, the U.S. Supreme Court reiterated their opinion, “civil labels and good intentions do not themselves obviate the need for criminal due process safeguards<sup>8</sup>....” The Supreme Court of California referred to its previous rejection of the civil label for confinement, “involuntary commitment is incarceration against one’s will regardless of whether it is called ‘civil’ or ‘criminal.’” The Court held that the standard of proof requires due

---

<sup>5</sup> Lanterman-Petris-Short Act (Welfare & Institutions Code, sec. 5000 et seq.) provides for conservatorship and involuntary commitment of “gravely disabled” adults.

<sup>6</sup> *Conservatorship of Roulet* (1979) 23 Cal.3d 219 225-226

<sup>7</sup> *In re Gault* (1967) 387 U.S. 1, 50.

<sup>8</sup> *In re Winship* (1970) 397 U.S. 358, 365-366.

## Conservatorship in Crisis

process considerations focused on the actual consequences to the individual<sup>9</sup>. The Supreme Court of California concluded, “appellant’s protection ultimately must rest on requiring the state to match its good intentions with proof without a reasonable doubt that appellant is in need of the state’s care.” The following year, a California Court of Appeals applied similar logic to probate conservatorship<sup>10</sup>.

*Balancing the benefit and purpose of the probate conservatorship proceedings against the adverse consequences to the individual clearly suggests the proper standard is clear and convincing proof. The deprivation of liberty and stigma which attaches under a probate conservatorship is not as great as under an LPS conservatorship. However, to allow many of the rights and privileges of everyday life to be stripped from an individual “under the same standard of proof applicable to run-of-the-mill automobile negligence actions” cannot be tolerated.*

Unfortunately, the standard set forth by the court is rarely applied.

A 2007 study by U.C. Berkeley graduate students (Anders, 2009) found that not one of sixty randomly selected conservatorship cases in San Francisco County went to trial. The study found that proposed conservatees were rarely present for conservatorship hearings. Proposed conservatees were more likely to be conserved when represented by attorneys, indicating that attorneys did not necessarily represent the best interests of the conservatees. Of thirty-seven permanent conservatorship cases studied, only four cases limited the powers of the conservator. Those limitations were minor.

In November 2005, the Los Angeles Times published a scathing four-part series (Fields, 2006) on *Guardians for Profit*. Consistent themes running through the articles included abuses that took place because laws were not enforced, because conservatees’ wishes and best

---

<sup>9</sup> *People v. Thomas* (1977) 19 Cal.3d 630, 683.

<sup>10</sup> *Conservatorship of Mary Edith Sanderson* (1980) 106 Cal.App.3d 611, 620



## Conservatorship in Crisis

interests were ignored, and because victims lacked effective means to communicate with the court. The Los Angeles Times stated, “inaction and inattention by the courts have left many elderly Californians vulnerable to abuse by the very people entrusted with their care.” A GAO report (Government Accountability Office, 2006) the following year found similar deficiencies nationwide. The Los Angeles Times articles stimulated legislative response as only media coverage and public outcry can accomplish.

The Judicial Council of California quickly formed a Task Force on conservatorships (Corey, 2007), and legislation was forthcoming. The Omnibus Guardianship Reform Act of 2006 consisted of a package four bills intended to enhance protections for conservatees. Among the new requirements was a mandate for a Court Investigator to interview first and second degree relatives, spouse or domestic partner, neighbors and close friends of the proposed conservatee<sup>11</sup>. Also added was a presumption that the conservatee’s home is the preferred residence<sup>12</sup>, and measures were established to protect the conservatee’s home from being sold<sup>13</sup>. Sadly, these measures have not curbed abuse of conservatees. A 2010 GAO report (Government Accountability Office, 2010) found “State Courts Failed to Adequately Screen Potential Guardians,” “State Courts Failed to Adequately Oversee Guardians after Their Appointment,” and “State Courts Failed to Communicate with Federal Agencies about Abusive Guardians.”

Once again, the task of shining light on abuse fell to the media. In summer and fall of 2012, the *San Jose Mercury News* ran a series on financial abuses by private fiduciaries and

---

<sup>11</sup> Probate Code 1826(a)

<sup>12</sup> Probate Code 2352.5(a)

<sup>13</sup> Probate Code 2540, Probate 2543

## Conservatorship in Crisis

court appointed attorneys in Santa Clara County. In *Loss of Trust* (deSa, 2012) exposed exorbitant fees charged for mundane tasks. Most offensive were “fees on fees” in which fiduciaries charged conservatees’ estates for opposing conservatees’ complaints of abuse or overcharging. The stories reported that sizable estates were exhausted in months to a few years.

The ABC7 News I-Team followed with stories of two conservatees of the Santa Clara County Public Guardian. Gisela Riordan (Noyes, Public Guardian under fire for isolating elderly, 2012) was confined and isolated for over two years. Her home was sold to pay for her confinement. Lillie Scalia (Noyes, 2012) was confined and isolated for a year. A reverse mortgage was taken on her home to pay for her confinement. Their stories will be examined in greater depth in the case studies.

Caution voiced by Justice Louis Brandeis<sup>14</sup> nearly a century ago could well apply to conservatorship today.

*Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.*

We are born to freedom, but that freedom is ever at risk. As Californians grow older, we may find conservatorship to be the most insidious danger to our liberty.

---

<sup>14</sup> *Olmstead v. United States* (1928) 277 U.S. 438, 479.

## Conservatorship in Crisis

### Conservatorship's Darker Side: Case Studies

A conservator has considerable power over a conservatee's personal life and estate. In some cases, conservators abuse that power. Social services agencies, law enforcement, and the courts are hesitant to intervene in the actions of conservators. The cases studies below demonstrate how conservatorship is used to violate the rights of conservatees. The case studies also demonstrate the lack of remedy for those abuses.

#### Carol Hahn (San Bernardino County)

Carol Hahn<sup>15</sup> shared a home with her "dearest friend in the world" and close companion since she was widowed in 2002. In February 2010, Hahn's Alzheimer's disease progressed to a troublesome stage, and additional care was needed. Hahn's daughter retained an attorney and petitioned for conservatorship to provide needed medical and personal care. In June 2010, prior to any court hearing, a step-granddaughter took Hahn from her family and hid Hahn at Wildwood Canyon Villa, a residential care facility. The step-granddaughter instructed Wildwood that Hahn was not allowed visitors, phone calls, or mail. The step-granddaughter also converted Hahn's entire estate for the benefit of herself and her family.

In a 15-minute hearing in August 2010, the court awarded temporary conservatorship to the step-granddaughter. Hahn was not allowed to attend the hearing. The court investigator and court appointed attorney did not contact Hahn's companion, any family, friends, neighbors, or clergy. Family was not allowed to testify. A trial is scheduled for February 2013, more than two years after the abduction.

---

<sup>15</sup> *Conservatorship Carol J. Hahn, Kincaid, et al v. Martin et al*

## Conservatorship in Crisis

There was no court order authorizing confinement or isolation. However, Hahn remained unlawfully confined and isolated for fifteen months. She was not allowed visitors or mail. Phone calls were monitored and limited to a few minutes each week. Community Care Licensing cited Wildwood for violating Hahn's right to visitation, but Licensing did not enforce that right. San Bernardino County Sheriff's Department and District Attorney consider confinement and isolation to be civil matters.

Hahn's isolation ended in September 2011, when family obtained a temporary restraining order against isolation. Family incurred about \$70K in legal fees to restore Hahn's right to visitation. Hahn's court appointed attorney charged Hahn's estate over \$70K for his efforts to oppose Hahn's right to visitation, her right to sleep in a bed rather than a mattress on the floor, and her right to receive medical care. Although currently allowed visitation under the 2011 restraining order, Hahn is still confined and denied appropriate medical care. Prior to the 2013 trial date, family will have incurred about \$300K in legal fees on Hahn's behalf.

### **Gisela Riordan (Santa Clara County)**

Gisela Riordan<sup>16</sup> lived comfortably in her own home with her son, who maintained the home and did chores as needed. In late 2009, Riordan was a victim of physical and financial abuse by her mentally ill daughter. In a 15-minute hearing in March 2010, the court appointed the Public Guardian as conservator. Riordan was not allowed to attend the hearing. The court investigator and the court appointed attorney did not interview family, friends, neighbors, or clergy. Testimony from family was disregarded. There was no trial.

---

<sup>16</sup> *Conservatorship of Gisela I. Riordan*

## Conservatorship in Crisis

The Public Guardian removed Riordan from her home, evicted her son, and sold her home. Riordan has been confined and isolated a series of residential care facilities over the past two and a half years. She is currently confined and isolated at Villa Fontana in San Jose. Riordan is not allowed visitors, phone calls, or mail. There is no court order giving authority for confinement or isolation.

The court appointed attorney and the court investigator charged Riordan's estate to oppose her son's attempts to restore Riordan's right to visitation and needed medical care. They also charged the estate to oppose advocates seeking to establish contact with Riordan and to determine her physical and mental condition. Community Care Licensing refused to issue a citation for violation of Riordan's right to visitation. San Jose Police Department and the Santa Clara County District Attorney consider confinement and isolation to be civil matters.

### **Lillie Scalia (Santa Clara County)**

Lillie Scalia<sup>17</sup> lived comfortably in her own home with her brother and niece, who provided for her care. It is not clear how the Public Guardian came to be involved in Scalia's case, but the court record includes numerous allegations of abuse by family. None of those allegations was substantiated. In 15-minute hearing in September 2010, the court appointed the Public Guardian as conservator. Scalia was not allowed to attend the hearing. The court investigator did not interview family, friends, neighbors, or clergy. Testimony from family was disregarded. There was no trial.

The Public Guardian promptly removed Scalia from her home and isolated her in a series of facilities. At the request of Scalia's personal attorney, also her court appointed attorney,

---

<sup>17</sup> *Conservatorship of Lillie P. Scalia*

## Conservatorship in Crisis

Judge Zepeda ordered "...arrange Lillie Scalia to be transferred to her home." However, the Public Guardian evicted Scalia's family and took a fraudulent owner-occupied reverse mortgage on the vacant home. Scalia's home remained vacant for two years, and Scalia was confined and isolated at a series of assisted living facilities. Until November 2012, Scalia was held at Villa Fontana in San Jose.

The first year of conservatorship, Scalia was denied all visitation. When family was concerned that Scalia was near death, a particularly insensitive deputy public guardian told family they might be allowed to see Scalia later "if she survives." The second year of conservatorship, pursuant to mediation and a court order, Scalia was allowed limited supervised visitation with three immediate family members. The Public Guardian denied all other visitation. There was no court order authorizing confinement or isolation.

Community Care Licensing refused to issue a citation for violation of Scalia's right to visitation. San Jose Police Department and the Santa Clara County District Attorney consider confinement and isolation to be civil matters. The Public Defender charged Scalia's estate to oppose efforts by family and by Scalia's own attorney to restore her right to visitation and to have her returned to her home.

On November 19, 2012, in the wake of coverage by the ABC7 News I-Team, the Public Guardian returned Scalia to her home. The Public Guardian did not make that decision for Scalia's benefit, but rather to avoid HUD action for mortgage fraud. It is not certain yet whether Scalia will be allowed visitors in her home.

## Conservatorship in Crisis

### George and Maria Jordanou (San Joaquin County)

George and Maria Jordanou<sup>18</sup> lived comfortably in their spacious and modern 5-bedroom home with their son, who owned a portion of the home and provided for his parents' care. In 2010, the son recognized that he needed a conservatorship to authorize medical care for Mr. Jordanou, whose dementia was reaching a troublesome stage. The son approached legal aid for assistance with petitioning for conservatorship. In a 15-minute hearing in May 2010, the Probate Court appointed the Public Guardian as conservator for both elder Jordanous. The elder Jordanous were not allowed to attend the hearing. The court investigator made numerous allegations of abuse against the son. None of the allegations was substantiated. Testimony of the son was disregarded. There was no trial.

The Public Guardian removed the elder Jordanous from their home, evicted their son, and sold the home. The Public Guardian separated Mr. and Mrs. Jordanou into two different residential care facilities. Mrs. Jordanou was confined and isolated at Sunny Place of Stockton, a residential care facility. After her death in 2011, Community Care Licensing cited Sunny Place of Stockton for isolation, neglect, and wrongful death of Mrs. Jordanou. Licensing assessed the maximum civil penalty of \$150. The Director of Sunny Place told this writer that she did not appeal the penalty because, "It was so insignificant." In 2012, the Public Guardian threatened in writing to isolate Mr. Jordanou if the son filed any further complaints. There was no court order for confinement or isolation.

---

<sup>18</sup> *Conservatorship George Jordanou, Conservatorship of Maria Jordanou*

## Conservatorship in Crisis

### Mental Abuse, Confinement, and Isolation

The duty of a conservator to act in the “best interest” of the conservatee is woven throughout the Probate Code. That best interest is met by selecting the least restrictive residence<sup>19</sup>, which is presumed to be the conservatee’s own residence<sup>20</sup>. The Probate Code does not speak directly to the conservatee’s right to visitation. However, the *Notice of Conservatee’s Rights*<sup>21</sup> (Judicial Council of California, 2008) specifically states the resident’s right to have visitors. The *Handbook for Conservators*<sup>22</sup> expands on the conservatee’s right to have visitors, phone calls, and mail.

Isolation of an elder constitutes elder abuse and is prohibited under California law. The Welfare & Institutions Code<sup>23</sup> includes isolation in its definition of elder abuse. Under the Penal

---

<sup>19</sup> Probate Code 2352(b) *The conservator shall select the least restrictive appropriate residence, as described in Section 2352.5, that is available and necessary to meet the needs of the conservatee, and that is in the best interests of the conservatee.*

<sup>20</sup> Probate Code 2352.5(a) *It shall be presumed that the personal residence of the conservatee at the time of commencement of the proceeding is the least restrictive appropriate residence for the conservatee. In any hearing to determine if removal of the conservatee from his or her personal residence is appropriate, that presumption may be overcome by a preponderance of the evidence.*

<sup>21</sup> GC-341 *Unless the court has limited or taken the right away, the conservatee also keep the right to: Receive personal mail; Receive visits from family and friends; ....*

<sup>22</sup> *Handbook for Conservators (2002) p 61. When a person becomes a conservatee, he or she does not lose the right to visit with friends or family. Encourage the conservatee to keep in touch with family members, friends, and neighbors. You or someone else may need to help the conservatee write letters or make phone calls. Encourage family and friends to visit and write back, and suggest that they take the conservatee on regular outings and trips. Even extremely impaired people enjoy going to a restaurant or a park or out for a drive. Do not isolate the conservatee by keeping friends or family away.*

<sup>23</sup> *Welfare & Institutions Code 15610.07 "Abuse of an elder or a dependent adult" means either of the following: (a) Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering.(b) The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.*



## Conservatorship in Crisis

Code, “mental abuse” of an elder is a misdemeanor<sup>24</sup>. If that abuse leads to serious or injury or death, then the act is a felony<sup>25</sup>.

Federal statute specifically speaks violation of civil rights under color of law<sup>26</sup>. Government employees that violate a conservatee’s constitutional rights can be fined or imprisoned. If those violations lead to death of the conservatee, then life imprisonment or the death penalty can be imposed.

However, confining and isolating conservatees is common practice. The included case studies contain examples of government employees directly engaging in violations of civil rights or being complicit in those violations. In San Bernardino County, the Sheriff’s office was complicit in and aided civil rights violations by a private conservator. In Santa Clara County, employees of the Public Guardian’s office provided unequivocal evidence of their office’s civil rights violations under color of law.

---

<sup>24</sup> Penal Code 368(c): *Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor.*

<sup>25</sup> Penal Code 368(b)(1): *Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed six thousand dollars (\$6,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years.*

<sup>26</sup> 18 U.S.C. § 242 *Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both....*

## Conservatorship in Crisis

Investigating the Gisela Riordan case, this writer spoke with three Santa Clara County Deputy Public Guardians, all of whom stated they had authority to isolate conservatees. In an April 27, 2012 meeting with Deputy Public Guardian Rebecca Pisano-Torres, this writer asked to visit with Riordan and expressed that Riordan had the right to determine whether she received visitors.

Torres: "Actually, it's my choice."

Kincaid: "Are you sure about that?"

Torres: "It is. I'm positive."

In a May 2, 2012 phone call with Deputy Public Guardian Carlotta Royal, this writer again asked to visit with Riordan.

Royal: "...No. You won't be able to."

Kincaid: "And what authority do you have to restrict visitation?"

Royal: "We're the conservator. The court appointed conservator."

Kincaid: "...you are stating that you have authority to restrict visitation."

Royal: "Based on the information I have been provided. Yes."

Kincaid: "Are you familiar with the conservatorship handbook?"

Royal: "Yes, I am. I have a copy here at my desk."

Kincaid: "Are you familiar with the section that states the conservator does not have the right to restrict visitation?"

Royal: "What? What page are you referring to?"

On June 6, Court Investigator Yara Ruiz visited Riordan and prepared a report for the court. That report confirmed that Riordan wished to visit with her children and that visitation had been largely denied.

*...she was clear in expressing a desire for continued visitation with both Mark and Kelly.*

*The Public Guardian has denied visitation to Mark during periods of time when his concerning behavior and his hostility toward the Public Guardian has escalated specifically when the Public Guardian evicted him from Gisela's home and then sold the home.*

## Conservatorship in Crisis

Ruiz suggested a mechanism for the Public Guardian to obtain authority from the Court for their ongoing isolation of Riordan. Ruiz’s recommendation was a specific response to the advocacy efforts of this writer and associated elder advocates. That recommendation should alarm for any individual that values personal rights and due process of law.

*Furthermore it also appears the Public Guardian should request expansion of the current visitation order to include non-family members.*

In early July 2012, a group of advocates organized through the National Association to Stop Guardian Abuse (NASGA) documented isolation of Gisela Riordan at Villa Fontana. Over two weeks, eighteen different individuals called Villa Fontana. The facility denied access to all eighteen individuals.

<b>Date</b>	<b>Time</b>	<b>Villa Fontana Employee</b>	<b>Response</b>
6/23	afternoon	Refuse to state	Refuse
6/24	2:08pm	Refuse to state	Refuse
6/23	5:37pm	Refuse to state	Refuse
6/24	6:12pm	Jenny	Refuse
6/24	6:55pm	Refuse to state	Refuse
6/24	7:07pm	Refuse to state	Refuse
6/25	10:15	Adrien	Refuse
6/28	10:59am	Adrien	Refuse
6/28	12:17pm	Adrien	Refuse
6/28	12:41pm	Lulet	“Fuck”
6/28	1:05	Adrien	Refuse
6/28	2:33	Adrien	Refuse
6/29	2:25	Adrien	Refuse
7/2	1:53pm	Adrien	Refuse
7/3	3:40pm	Adrien	Refuse
7/3	4:00 pm	Marife Deuwel	Refuse
7/5	9:19am	Adrien	Refuse

On August 12, 2012, this writer contacted Deputy Public Guardian Bruce Thurman, asking again to visit Riordan. Thurman left the following voicemail on August 14, 2012.

## Conservatorship in Crisis

*My name is Bruce Thurman with the Office of the Public Guardian. I'm the assigned Deputy Public Guardian conservator for Gisela Riordan. This message is for Linda Kincaid. You had called me yesterday and asked to visit with Gisela Riordan. My response to you is that that's going to be a negative. No. If you have questions, you can call me at 408-755-7676. Thanks.*

Throughout the months above, Public Guardian Don Moody refused to have a conversation with this writer. NASGA President Elaine Renoire reached Moody in his office. Moody told Renoire that he could not comment because he was not familiar with Riordan's case.

In October 2012, ABC7 News investigative reporter Dan Noyes visited Villa Fontana and asked to see Riordan. Villa Fontana employee Steve Hooker denied the visit and called Deputy Public Guardian Bruce Thurman. Thurman instructed Hooker to call 911. Thurman told Noyes he would not be allowed to see Riordan until the Public Guardian conducted a background check on Noyes. It should be noted that Noyes has clearance to be in the Oval Office with the president.

## Conservatorship in Crisis

### No Remedy through Department of Social Services

All residents of residential care facilities for the elderly (RCFE) are guaranteed the right to private visitation<sup>27</sup>, private phone calls<sup>28</sup>, and unopened mail<sup>29</sup>. Those rights are enumerated in the *Personal Rights Residents of Long-Term Care Facilities for the Elderly* (California Department of Social Services, 2005). Community Care Licensing (CCL) Division of the Department of Social Services is responsible for licensing RCFEs and enforcing licensing regulations. Violations of licensing regulations in RCFEs are appropriately reported to the local CCL office.

#### Carol Hahn

Hahn's daughter filed a July 7, 2010 complaint with the Southern California Regional CCL office. The local office requested guidance from Sacramento as to whether restriction of all visitation, phone calls, and mail was indeed a violation of Hahn's personal rights. That need for guidance resulted in a delay of nearly three months. On September 27, 2010, CCL cited Wildwood Canyon Villa for a violation of 22 CCR 87468(11), Hahn's personal right to visitation. CCL did not assess a monetary penalty. Further, CCL cleared the citation on August 8, 2010 without requiring a correction of the violation. Hahn remained isolated until September 1, 2011, when the Court issued a TRO against further isolation.

---

<sup>27</sup> 22 CCR 87468 (11) *To have his/her visitors, including ombudspersons and advocacy representatives permitted to visit privately during reasonable hours and without prior notice, provided that the rights of other residents are not infringed upon.*

<sup>28</sup> 22 CCR 87468(14) *To have reasonable access to telephones, to both make and receive confidential calls. The licensee may require reimbursement for long distance calls.*

<sup>29</sup> 22 CCR 87468 (15) *To mail and receive unopened correspondence in a prompt manner.*

## Conservatorship in Crisis

### **Gisela Riordan & Lillie Scalia**

This writer filed multiple complaints with the San Francisco Coastal Regional CCL office.

On June 19, 2012 CCL issued their Complaint Investigation Report.

*Based on our investigation visits and phone calls are permitted within the parameters established in the resident's file.*

*Allegation is unfounded at this time and no citation is issued.*

Community Care Licensing did not respond to further communications from this writer.

### **Maria Jordanou**

The Jordanous' son filed numerous complaints with the Sacramento Regional CCL office. CCL cited Sunny Place of Stockton for isolation, elder abuse, and wrongful death of Maria Jordanou. The civil penalty was \$150. The Director of Sunny Place told this writer that she did not appeal the penalty because, "It was so insignificant."

### **Response from Department of Social Services**

The Department of Social Services oversees Community Care Licensing. This writer repeatedly contacted Will Lightbourne, Director of California's Department of Social Services, concerning isolation of Gisela Riordan. In a June 19, 2012 letter, Lightbourne stated an opinion in opposition to the *Resident's Personal Rights*, the *Notice of Conservatee's Rights* and the *Handbook for Conservators*.

*The results of the investigation are clear that there are no violations of Ms. Riordan's personal rights due to isolation occurring at the Villa Fontana facility.... Under the broad legal powers conferred to the conservator of the person under California Probate Code Section 2350 et seq., and in accordance with the court order granting conservatorship, the conservator in this situation is charged with care, custody, and control of the conservator. Unless otherwise limited by the court, which is not the case in this particular conservatorship, this includes the right to control just who is an appropriate visitor to the conservatee.... In regards*

## Conservatorship in Crisis

*to Ms. Riordan, the Public Guardian has determined that you are not to have any contact with Ms. Riordan.*

On August 24, 2012, Greta Wallace, Deputy Director / Chief Counsel for the Department of Social Services added her opinion that the Public Guardian need not honour RCFE residents' rights or conservatees' rights.

*In this case, the Public Guardian, as duly appointed conservatory, has the delegated authority to determine appropriate visitors for Ms. Riordan.... The above restrictions are well within the law and cannot be viewed as a violation of Ms. Riordan's personal rights.*

The Department of Social Services has not responded to subsequent communications from elder advocates.

## Conservatorship in Crisis

### No Remedy through Law Enforcement or Criminal Court

According to Penal Code 368, anyone that “willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering” commits a misdemeanor. If the act causes great bodily injury or harm, then that act is a felony. False imprisonment of an elder is also a felony under Penal Code 368. The unfortunate reality is that police departments and district attorneys are hesitant to intervene in elder abuse, especially mental abuse.

#### Carol Hahn

Family filed a police report concerning Hahn’s abduction, isolation, and false imprisonment. Family also reported conversion of Hahn’s estate for the benefit of her abductors. San Bernardino County Sheriff’s Department determined that no crime had been committed, and they refused to intervene. Deputy Grant Ward threatened to charge Hahn’s daughter with a crime if she filed any further complaints. Sergeant Paul Morrison took a stronger position.

*The Wildwood Canyon Villa has instructed their staff to call the police and report any further actions by Linda Kincaid and her associates as criminal acts. Linda Kincaid and her associates are considered trespassing if they are located anywhere on the property of the facility. Any further telephone calls may be considered as annoying and threatening. They will only communicate with Linda Kincaid and her associates through legal channels.*

San Bernardino County Deputy District Attorney Tristan Svare stated multiple times, “There is nothing out of the ordinary. Stop calling!”

Two years later, in a 2012 deposition, Deputy Ward confirmed that he acted to isolate Hahn. He indicated that he believed his actions were appropriate.



## Conservatorship in Crisis

*Q Okay. Did you ever tell Linda on the phone that she would be arrested if she tried to visit Carol again?*

*A Yes, when I was advised by the care facility that if Linda arrived on the property they were desirous of prosecution for trespassing or Penal Code 602, that -- I told her straight out if you were to come without prior authorization you would be arrested for trespassing, it would be a citizen's arrest or if I'm on scene it would be an on view.*

*A ...Most care facilities just do not allow random people in but not -- you know, I'm not an expert at their policies so it's up to them.*

*Q But it's your understanding that care facilities don't have to let in people they don't want to?*

*A Yes, absolutely.*

San Bernardino County Internal Affairs investigated Deputy Ward's activities and determined that all activities were appropriate.

### **Gisela Riordan & Lillie Scalia**

Families and numerous advocates reported confinement and isolation and of Gisela Riordan and Lillie Scalia. San Jose Police Department investigated, and Sergeant Richard Benitez reported.

*As I understand the issue, you are concerned that the elder persons are being neglected and restricted from having visitors. After speaking with my officer, I have learned that he inspected the persons and premises and did not observe any conditions which support your concerns regarding neglect. He examined documents provided by the care home which explained that several persons in the home are under the conservatorship of the Public Guardian's Office and are restricted from receiving certain visitors or require supervision when receiving visitors.*

*Based on all the information I have gathered at this point, it does not appear to me that this situation is a criminal neglect matter that would require the involvement of the police department.*

This writer filed a policy complaint with the Independent Police Auditor. Police Chief Chris Moore responded.

## Conservatorship in Crisis

*After reviewing the facts as stated in your complaint, it has been determined that the actions taken were consistent with Department policy. This case will be closed as a Policy Complaint.*

Chief Moore's statement is technically correct. The SJPD Policy Manual does not address mental abuse, confinement, or isolation of elders. SJPD does not respond to mental abuse, because the Department lacks a policy on mental abuse.

On November 16, 2012, this writer met with Lieutenant Michael Knox, Commander of Internal Affairs. Knox was attentive and professional in his concern for deficiencies in the SJPD Policy Manual. Knox referred the issue to the Research and Development Lieutenant. Perhaps in time, San Jose Police will have more appropriate guidance concerning mental abuse of elders.

Unfortunately, Santa Clara County Deputy District Attorney Cherie Bourland took the position that confinement and isolation of elders are civil matters.

*This is a civil issue. You would have to petition the probate court through civil avenues. ... Once there is a clear violation of a court order, which is not the case here, and it has been investigated by a local law enforcement agency, then my office can review it. Hope this helps.*

With no remedy available from law enforcement or the criminal courts, families with adequate resources seek a remedy in civil court. Families without resources to mount litigation are left with no remedy available.

## Conservatorship in Crisis

### No Remedy in Civil Court

The Elder Abuse and Dependent Adult Civil Protection Act<sup>30</sup> recognized the increasing incidence of elder abuse and the difficulties in prosecuting perpetrators. Part of the legislative intent of the Act was to encourage “interested persons” to bring elder abuse litigation<sup>31</sup> in civil court. Unfortunately, the Act neglected to address a crucial impediment to civil remedies for elder abuse. During the life of a conservatee, standing to sue is given to the conservator and only to the conservator<sup>32</sup>. In 2012, both San Bernardino County<sup>33</sup> and Los Angeles County<sup>34</sup> Probate Courts ruled that family members lacked standing to sue while their loved ones survive. Although the Act<sup>35</sup> would appear to give standing to family, trial courts rule that standing does not attach until the death of the abused elder. The matter has not yet been argued at the appellate level.

---

<sup>30</sup> California Code 15600-15675

<sup>31</sup> Welfare and Institutions Code 15600(j) *It is the further intent of the Legislature in adding Article 8.5 (commencing with Section 15657) to this chapter to enable interested persons to engage attorneys to take up the cause of abused elderly persons and dependent adults.*

<sup>32</sup> CCP 372(a) *When a minor, an incompetent person, or a person for whom a conservator has been appointed is a party, that person shall appear either by a guardian or conservator of the estate or by a guardian ad litem appointed by the court in which the action or proceeding is pending, or by a judge thereof, in each case.*

<sup>33</sup> *Kincaid et al v. Martin et al*

<sup>34</sup> *Kasof v. Foster, et al; Stevens v. Stevens*

<sup>35</sup> Welfare and Institutions Code 15657.3(d)(2) *If the personal representative refuses to commence or maintain an action or if the personal representative's family or an affiliate, as those terms are defined in subdivision (c) of Section 1064 of the Probate Code, is alleged to have committed abuse of the elder or dependent adult, the persons described in subparagraphs (A), (B), and (C) of paragraph (1) shall have standing to commence or maintain an action for elder abuse.*

## Conservatorship in Crisis

### Conservatorship and Civil Rights in Conflict

The cases above exemplify apathy, negligence, and deliberate abuse on the part of private conservators and public guardians. However, in some cases, the Probate Code itself is in conflict with the fundamental civil right to due process. The Bill of Rights enumerates civil rights that must not be violated by the federal government. The 14<sup>th</sup> Amendment to the Constitution incorporates most of those rights, thus prohibiting states violating individuals' civil rights.

The California Constitution enumerates civil rights that are in keeping with the Bill of Rights and the 14<sup>th</sup> Amendment. On close examination, certain sections of the Probate Code are at odds with those express rights. In the Court's urgency to act on conservatorship petitions, conservatees may be deprived of their civil rights as stated in the California Constitution and reiterated in case law.

Most central in the conservatorship discussion is Article 1 Section 7(a)<sup>36</sup> of the California Constitution. That section guarantees a person may not be deprived of liberty or property without due process of law. Section 13<sup>37</sup> guarantees a person may not to be subject to unreasonable searches and seizures.

California courts have held that civil confinement through conservatorship is no less intrusive than criminal confinement in a penitentiary. Hence, proposed conservatees are

---

<sup>36</sup> California Constitution Article 1, Section 7(a) *A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws;*

<sup>37</sup> *California Constitution Article 1, Section 13 The right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches may not be violated; and a warrant may not issue except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.*

## Conservatorship in Crisis

entitled to the same due process that criminal defendants receive prior to being incarcerated. The *Notice of Conservatee's Rights*<sup>38</sup> reiterates that a conservatee has the rights given to criminal defendants.

However, portions of the Probate Code deny the very civil rights guaranteed in the California Constitution and clearly stated in the *Notice of Conservatee's Rights*. A conservatee is deemed to lack legal capacity to enter into a contract<sup>39</sup>. Denied ability to enter into a contract, the conservatee is effectively denied any opportunity to retain counsel or oppose conservatorship proceedings. In cases of confinement and isolation, such as the case studies above, the conservatee has no opportunity to object to abuse or to seek assistance of any kind.

Further, the Probate Code authorizes a Public Guardian to seize real and personal property<sup>40</sup> **30 days before**<sup>41</sup> any hearing takes place. Homes and bank accounts are seized without court oversight. Family members are evicted. Proposed conservatees have no access to personal funds to retain counsel or to provide for personal needs. Proposed conservatees

---

<sup>38</sup> *After the appointment of a conservator, the conservatee keeps the right: Be represented by a lawyer; Ask the judge to replace the conservator; Ask a judge to end the conservatorship;*

<sup>39</sup> Probate Code 1872(a) *Except as otherwise provided in this article, the appointment of a conservator of the estate is an adjudication that the conservatee lacks the legal capacity to enter into or make any transaction that binds or obligates the conservatorship estate.*

<sup>40</sup> Probate Code 2900(a)(1) *If the public guardian or public conservator determines that the requirements for appointment of a guardian or conservator of the estate are satisfied and the public guardian or public conservator intends to apply for appointment, the public guardian or public conservator may take possession or control of real or personal property of a person domiciled in the county that is subject to loss, injury, waste, or misappropriation, and, subject to subdivision (b), may deny use of, access to, or prohibit residency in, the real or personal property, by anyone who does not have a written rental agreement or other legal right to the use of, or access to, the property.*

<sup>41</sup> Probate Code 2901(a) *A public guardian who is authorized to take possession or control of property under this chapter may issue a written certification of that fact. The written certification is effective for 30 days after the date of issuance.*

## Conservatorship in Crisis

are rendered utterly dependent on the Public Guardian with no viable means to oppose the impending conservatorship action.

Accepted understanding of “due process” includes the right to a jury trial<sup>42</sup>. Probate Code confirms the right to a jury trial based on “clear and convincing evidence.”<sup>43</sup> In practice, however, conservatorship trials are rare and occur only when motivated and affluent family members have the means to contest a conservatorship. Many conservatorship petitions are approved after hearings of only a few minutes. Petitions may contain unsubstantiated allegations and hearsay. Proposed conservatees may be denied their right to attend their own hearings and to confront their accusers. Family may be denied the opportunity to give testimony, or that testimony may be disregarded in favor of unsubstantiated allegations.

Conservatee’s rights are terminated with the stroke of a pen. Once conserved, the conservatee lacks the means to effectively oppose conservatorship proceedings or object to abuse. Civil rights that we take for granted are, in essence, extinguished in conservatorship.

---

<sup>42</sup> Probate Code 1827 *The court shall hear and determine the matter of the establishment of the conservatorship according to the law and procedure relating to the trial of civil actions, including trial by jury if demanded by the proposed conservatee.*

<sup>43</sup> Probate Code 1801(e) *The standard of proof for the appointment of a conservator pursuant to this section shall be clear and convincing evidence.*

## **Conservatorship in Crisis**

### **Conservatorship's Dark Future**

California's conservatorship system is alarmingly repressive and devoid of oversight or accountability. The case studies presented above stir dark memories of confinement in the mental institutions of centuries past. Individuals were declared insane and confined with little opportunity to stay the process. Once confined, there was little hope of escape.

The Probate Code requires due process and specifies that conservators must act in the best interest of their conservatees. The Notice of Conservatee's Rights enumerates rights to representation by counsel and visitation with loved ones. But in practice, those rights may be ignored.

Oversight of conservators is inadequate. With little accountability for abusive actions, conservators exercise nearly absolute power over their conservatees. History has shown repeatedly that absolute power of one group over another leads to abuses of rights and abuses of persons. The case studies above speak to those abuses.

## Conservatorship in Crisis

### Bibliography

- Administrative Office of the Courts. (2002). *Handbook for Conservators*. San Francisco: Judicial Council of California.
- Anders, S. (2009). *Conservatorship Reform in California: Three cost-effective recommendations*. San Francisco: California Advocates for Nursing Home Reform.
- California Department of Social Services. (2005). *Personal Rights Residential Care Facilities for the Elderly*. Sacramento: State of California Health and Human Services Agency.
- Corey, E. (2007, Winter). Crisis in Conservatorship. *California Trusts and Estates Quarterly*.
- deSa, K. (2012, June 30). Loss of Trust. *San Jose Mercury News*.
- Fields, R. (2006, November 11-13). Guardians for Profit. *Los Angeles Times*.
- Government Accountability Office. (2006). *Guardianships: Little Progress in Ensuring Protection for Incapacitated Elderly People*. Washington, D.C.: United States Government Accountability Office.
- Government Accountability Office. (2010). *GUARDIANSHIPS Cases of Financial Exploitation, Neglect, and Abuse of Seniors*. Washington, D.C.: United States Government Accountability Office.
- Judicial Council of California. (2008). *Notice of Conservatee's Rights*. San Francisco: Judicial Council of California.
- Noyes, D. (2012, October 31). I-Team investigates South Bay public guardian. *ABC7 News*.
- Noyes, D. (2012, November 1). Public Guardian under fire for isolating elderly. *ABC 7 News*.