

Memorandum 79-12

Subject: Study F-100 - Guardianship-Conservatorship Revision (Proposal for Limited Conservatorship)

We have received from a committee of the Barristers of the Los Angeles County Bar Association a proposal to add to the Commission's guardianship-conservatorship legislation a new concept for "limited conservatorships" of developmentally disabled adults (see Exhibit 1 to this memorandum). The term "developmental disability" means "a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial handicap for such individual," and includes "mental retardation, cerebral palsy, epilepsy, and autism." Welf. & Inst. Code § 4512. Under the proposal, a developmentally disabled adult could be subjected only to a limited conservatorship under which he or she would retain full legal capacity except to the extent the court specifically ordered otherwise. Similarly, the limited conservator would have few powers unless the court specifically conferred them. This would be a substantial departure both from existing law and from the scheme of the Commission's proposed legislation.

Rights Retained by Conservatee Under Commission's Proposed Legislation

Conservator of the estate. With respect to powers of estate management, the Commission's proposed legislation continues the rule of existing law that, although appointment of a conservator of the estate does not of itself render the conservatee legally incompetent, the conservator of the estate has the power to disaffirm contracts made by the conservatee for non-necessaries if the contract is not one into which a reasonably prudent person might enter. See proposed Section 1872. However, the Commission's scheme is quite flexible in that the court is given discretion to broaden or restrict the conservatee's power to bind the conservatorship estate. See proposed Section 1873. Thus, the court may tailor an order to the situation of the particular conservatee.

Conservator of the person. With respect to the powers of a conservator of the person, the only provisions in the Commission's proposed

legislation for an individually-tailored order relate to consent to medical treatment. See proposed Sections 1880, 2354-2355. Apart from the medical treatment provisions, the conservator of the person generally "has the care, custody, and control of, and has charge of the education of," the conservatee. Proposed Section 2351. The precise scope of this power is ill-defined since there are few appellate cases. W. Johnstone & G. Zillgitt, California Conservatorships § 5.3, at 153 (Cal. Cont. Ed. Bar 1968). However, "[i]t is clear that the conservator of the person must decide where the conservatee shall live, what doctors, nurses, and companions are employed, what daily routines are followed, and similar personal matters." Id.

Possible Revision of Commission's Proposed Legislation

It would be possible, following the suggestion of the Barristers' committee, to include in the Commission's proposed legislation a provision permitting the court to order that the conservatee retains such rights with respect to his or her person as may be specified in the order. A provision that the conservator of the person has no powers except those specifically conferred by court order would be more drastic but would be closer to the Barristers' proposal.

The staff has reservations about curtailing the powers of a conservator of the person. If the conservator of the person is to have only minimal control over the conservatee, the need for a conservatorship of the person would appear doubtful. On the other hand, such a scheme could be analogized to the doctrine of partial emancipation of a minor and would permit appointment of a conservator of the person for the limited purpose of giving consent to needed medical treatment where medical personnel are otherwise reluctant to proceed.

If the Commission is interested in such a scheme, the pertinent sections could be revised as follows:

§ 2351. Care, custody, control, and education

2351. (a) Subject to subdivision (b), the guardian or conservator has the care, custody, and control of, and has charge of the education of, the ward or conservatee.

(b) Where the court determines that it is appropriate in the circumstances of the particular conservatee, the court, in its discretion, may limit the powers that the conservator would otherwise have under subdivision (a) by an order:

(1) Specifying the specific powers that the conservator does not have with respect to the conservatee's person and reserving the powers so specified to the conservatee; or

(2) Specifying the specific powers the conservator has with respect to the conservatee's person and reserving to the conservatee all other rights with respect to the conservatee's person that the conservator otherwise would have under subdivision (a).

(c) An order under this section (1) may be included in the order appointing a conservator of the person or (2) may be made, modified, or revoked subsequently upon notice given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

Comment. . . .

Subdivisions (b) and (c) are new and give the court flexibility to fashion an order appropriate to the circumstances of the particular conservatee. Under subdivision (b), for example, the court has discretion to make an order allowing the conservatee to fix his or her own residence or to make decisions concerning his or her own education.

§ 2352. Residence and domicile of ward or conservatee

2352. (a) The guardian or conservator may fix the residence and domicile of the ward or conservatee at:

(1) Any place within this state without the permission of the court.

(2) A place not within this state if permission of the court is first obtained.

(b) The guardian or conservator shall promptly mail to the court notice of all changes in the residence and domicile of the ward or conservatee.

(c) This section does not apply where the court has made an order under Section 2351 pursuant to which the conservatee retains the right to fix his or her own residence.

Comment. . . .

The exception provided in subdivision (c) is new and conforms to subdivision (b) of Section 2351.

If the Commission is inclined to approve the foregoing provisions, the staff is of the view that the provisions should be applied to conservatorships generally and should not be limited to conservatorships of developmentally disabled adults.

Right of Conservatee to Marry

The Barristers' committee proposes that, absent a specific grant of power to the conservator by the court, the conservator should not have

the power "to consent or withhold consent to the marriage of the limited conservatee." However, the standards for determining whether the conservatee has capacity to marry are found in the Family Law Act rather than the Probate Code. See Civil Code §§ 4100, 4101, 4201, 4425(c). Only the court, and not the conservator, can determine whether the conservatee does or does not have capacity to marry. See W. Johnstone & G. Zillgitt, California Conservatorships § 1.28, at 14-15 (Cal. Cont. Ed. Bar 1968).

The question of the effect of the appointment of a conservator on the capacity of a conservatee to marry is unclear under existing law. Id. In a staff study presented to the Commission last August, the staff concluded that a court determination that the conservatee is incompetent casts doubt on his or her right to marry. Accord, W. Johnstone & G. Zillgitt, supra; cf. Conservatorship of Roulet, 23 Cal.3d 219, 228, ___ P.2d ___, ___, ___ Cal. Rptr. ___, ___ (1979) (one found to be gravely disabled under Lanterman-Petris-Short Act faces "possible loss" of right to marry). If the conservatee has not been found to be incompetent, it appears more likely that the conservatee will retain the capacity to marry, although the law is unclear. See W. Johnstone & G. Zillgitt, supra. In view of the uncertainty, it appears to be the "safer course" for the conservator to obtain instructions from the court; however, even if the court grants permission for the marriage, it would appear not to preclude a relative from seeking an annulment. Id.; see Civil Code §§ 4425(c), 4426(c).

The Commission's proposed legislation does not deal expressly with the question of the conservatee's capacity to marry and, therefore, continues the uncertainty under existing law. Like existing law, it may well be that a court finding under proposed Section 1874 that the conservatee is "seriously incapacitated" will constitute a determination that the conservatee lacks capacity to marry. If no such finding is made, the conservatee may be free to marry, subject to a later annulment proceeding brought by the conservator or by a relative of the conservatee on the ground that the conservatee was of "unsound mind" at the time of the marriage. See Civil Code §§ 4425(c), 4426(c). The specific listing in the proposed law of the various aspects of "legal capacity" that the court may determine in the conservatorship proceeding might be

construed to deprive the court of its existing authority to give "instructions" on this matter in the conservatorship proceeding.

The staff believes the law should be made clear. We recommend the proposed law be revised to provide that, unless the court orders otherwise, a determination that the conservatee is seriously incapacitated is a determination that the conservatee lacks capacity to marry. Where the conservatee has not been found to be seriously incapacitated, there should be an express provision permitting the court to determine whether or not the conservatee has capacity to marry at that time. These provisions could be located in a new chapter to be added to Part 3 (conservatorship) as follows:

CHAPTER 5. CAPACITY OF CONSERVATEE TO MARRY

§ 1900. Effect of adjudication that conservatee is seriously incapacitated

1900. Unless the court otherwise orders, a conservatee adjudged to be seriously incapacitated under Section 1874 lacks capacity to marry.

Comment. Section 1900 is new. Under prior law, the court could adjudicate the conservatee to be incompetent to make binding contracts by providing in the order of appointment of a conservator that the conservatee was a person "for whom a guardian could be appointed." See the Comment to Section 1874. If such an adjudication was made, the conservatee probably also lacked capacity to marry, and any marriage attempted by the conservatee after such an adjudication was probably subject to annulment by the conservator. See W. Johnstone & G. Zillgitt, California Conservatorships §§ 1.28-1.29, at 14-16 (Cal. Cont. Ed. Bar 1968); cf. Conservatorship of Roulet, 23 Cal.3d 219, 228, ___ P.2d ___, ___, ___ Cal. Rptr. ___, ___ (1979) (one found to be gravely disabled under Lanterman-Petris-Short Act faces "possible loss" of right to marry). Section 1900 eliminates the uncertainty under prior law by making clear that, unless the court orders otherwise, a conservatee adjudged to be seriously incapacitated lacks capacity to marry. Under Section 4426 of the Civil Code, a conservator is authorized to commence annulment proceedings.

§ 1901. Court determination of conservatee's capacity to marry

1901. (a) The court may by order determine whether the conservatee has the capacity to enter into a valid marriage, as provided in Part 5 (commencing with Section 4000) of Division 4 of the Civil Code, at the time the order is made. The court may make an order under this section whether or not the court has previously adjudged the conservatee to be seriously incapacitated.

(b) A petition for an order under this section may be filed by the conservator of the person or estate or both, the conservatee, any relative or friend of the conservatee, or any other interested person. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) A certified copy of the court's order may be filed with the county clerk from whom the issuance of a marriage license is requested.

Comment. Section 1901 is new. Under prior law, a conservator in doubt about the conservatee's capacity to marry could seek instructions from the court under former Section 1860. See W. Johnstone & G. Zillgitt, California Conservatorships § 1.28, at 15 (Cal. Cont. Ed. Bar 1968). Section 1901 continues the authority of the court to determine the conservatee's capacity to marry and provides procedural detail.

Respectfully submitted,

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Mr. John DeMouilly
 Executive Secretary
 California Law Revision Commission
 Stanford Law School
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Dear Mr. DeMouilly:

This is in response to your request for comments regarding the tentative draft revision to the Probate Code. I am sorry to have taken so long to get back to you but, for the past several months, our Barristers Committee (James Macy and Katherine O'Connell, Client's Rights Advocates for developmentally disabled adults, John Collins of O'Melveny & Myers, and Nancy Shea, formerly of the Mental Health Advocacy Project) has been working on a fairly extensive proposed revision.

Rather than comment in detail on the Tentative Draft, we thought it would be better to send you our suggestions for what statutes pertaining to "limited conservators" should be. I am thus enclosing drafts of a new Probate Code, Division 5, Chapter 12, and suggested changes in your Tentative Draft. I am also sending along a memorandum under cover of which we are submitting our proposals to the Barristers of the Los Angeles County Bar Association.

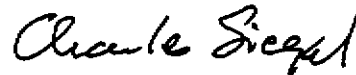
You will see from the enclosures that our proposals make substantial changes in the law applicable to developmentally disabled adults. Although we anticipate that we will get objections both from the courts and from the Probate Bar, we think that the law presently takes too many rights from such developmentally disabled adults, while giving them too few substantive and procedural protections. Therefore, we think the benefits outweigh the potential costs.

Mr. John DeMouilly
January 19, 1979
Page Two

I thank you for allowing us to work from your Tentative Draft and hope that our suggestions are useful.

If you have any questions or comments, please do not hesitate to write or call.

Very truly yours,

A handwritten signature in cursive script, reading "Charles Siegal".

Charles D. Siegal

CDS/kl

Enclosures

M E M O R A N D U M

TO: Barristers' Executive Committee

FROM: John M. Collins, James B. Macy, Katherine O'Connell,
Nancy Shea, and Charles D. Siegal

DATE: January 20, 1979

RE: Legislative Proposal For Limited Conservatorship

I. INTRODUCTION

Both the Probate Code as it presently exists, and the California Law Revision Commission's Proposed Draft of Division 4 of the Probate Code fail specifically to deal with problems relating to guardianships or conservatorships of the person and the estate of developmentally disabled adults.* Both treat developmentally disabled adults on the same footing as others requiring guardians and conservators. However, the disabilities of such developmentally disabled adults cover a wide spectrum; the broad authority presently given -- and proposed to be given -- by the Probate Code to a guardian or conservator often exceeds that strictly necessary for the best interests of the developmentally disabled ward or conservatee. We have attempted to formulate additions to the present Probate Code and changes in the Proposed Division 4 which would remedy the deficiencies in the existing and proposed systems.

The members of this committee are: James B. Macy, a Client's Right Advocate with the North Los Angeles County Regional Center for Developmentally Disabled Persons; John M. Collins, O'Melveny & Myers, specializing in probate law; Nancy Shea, associated with a mental health advocacy project of the Los Angeles County Bar Association; Katherine O'Connell, a Client's Right Advocate with the Harbor Regional Center; Charles D. Siegal, Munger, Tolles & Rickershauser, specializing in civil litigation.

* We are not criticizing the Proposed Draft; its drafters did not set out to address the issues with which we are concerned.

II. BACKGROUND

"Developmental disability" is defined in Welfare & Institutions Code Section 4512 to mean:

"[A] disability which originates before an individual obtains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial handicap for such individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include handicapping conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature."*

Guardians may be appointed for the persons and/or estates for minors or for insane or incompetent persons. An incompetent person is one "by reason of old age, disease, weakness of mind, or other cause, is unable, unassisted, properly to manage and take care of himself or his property, and by reason thereof is likely to be deceived or imposed upon by artful or designing persons." Probate Code § 1460. Conservators may be appointed for the person and/or property of one who "is unable properly to provide for his personal needs for physical health, food, clothing or shelter, and, in the case of a conservatorship of the property, is substantially unable to manage his own financial resources, or resist fraud or undue influence, or for whom a guardian could be appointed . . . " Probate Code § 1541. The guardianship and conservatorship provisions thus both cover people who are developmentally disabled.

The powers of guardians and conservators of the person are substantially the same. Each has the care, custody and control of the conservatee or ward; each may fix the residence

* Section 4512 is essentially a restatement of 42 U.S.C. § 6001(7). That Section has recently been amended, although it is uncertain whether or when Section 4512 will be amended to conform to it.

of a conservatee or ward, with the exception that the conservator of the person may not involuntarily place the conservatee in a mental health treatment facility. Each has very broad management powers over the estate of the conservatee or ward. See Probate Code Division 4, Chapters 7, 8, 9, Division 5, Sections 1851, 1852, 1853.

The proposed revised Probate Code would somewhat change the current system. Guardianship of the person would apply to unmarried minors. Conservatorships would apply to adults and married minors. The new Code would somewhat limit the authority of conservators over the financial affairs of conservatees. However, the new Code principally creates a coherent and rational scheme out of the substance of provisions of the old code, rather than making basic changes in the powers of guardians or conservators.

As can easily be imagined from the definition of developmental disability, the people in this category comprise a very wide range of specific disabilities. They may have greater or lesser abilities to take care of their own physical needs, to understand and provide for their material and financial needs, and to manage their social lives. Some may require institutionalization, while others can with little assistance live in the community at large. It has been estimated that 3% of the population falls within the broad definition of developmentally disabled.

The California Legislature has specifically stated that "[p]ersons with developmental disabilities have the same legal rights and responsibilities guaranteed all other individuals by the Federal Constitution and laws and the Constitution and laws of the State of California." Welfare & Institutions Code § 4502. These rights include: a right to treatment and habilitation services; a right to dignity, privacy, and humane care; a right to participate in an appropriate program of publicly-supported education, regardless of the degree of handicap; a right to social interaction and participation in community activities. Both the legislative intent behind Division 4.5 of the Welfare & Institutions Code, and the current trend of treatment of developmentally disabled adults emphasize maximization of freedom. However, the current provisions of the Probate Code -- and of the Proposed Code -- appear insensitive to the sort of individualized oversight that a developmentally disabled adult might require. That is, the broad powers given to a conservator or guardian under the present and proposed probate codes are more than is required for many of the developmentally disabled adults.

These deficiencies in present and proposed law are not merely theoretical. Since a guardian or conservator has the power to fix the ward or conservatee's residence, if for reasons of his own, the guardian or conservator disagrees with part of the ward's or conservatee's lifestyle, he has the ability to affect that lifestyle by changing the ward's residence. In the area of financial management, although the proposed Probate Code would give the conservatee certain powers over a small part of his or her income and would not incapacitate the ward from making decisions that a reasonably prudent person would make, in the present system and with the just-noted exceptions in the proposed system, the ward or conservatee is effectively prevented from making most, if not all, of the financial decisions which affect his or her life.

While this committee is not arguing at this time that a change in the Probate Code is constitutionally mandated, there are obviously difficult questions about any system that takes substantial liberties away from individuals with only a minimal showing that the impairment is necessary and essential for that individual's or society's well-being.

III. PROPOSED IMPROVEMENT IN THE PROBATE CODE.

With the above-noted deficiencies in mind, we have drafted proposed legislation to make conservatorship laws conform more closely to the needs of developmentally disabled adults.*

Under our proposal, developmentally disabled adults would be treated separately from the rest of the population subject to the guardian or conservatorship statutes. In particular, when a petition for a conservator or guardian indicates that a proposed conservatee or ward falls within the categories of those who are developmentally disabled, the court would have to institute a proceeding for a "limited conservatorship." (Of course, the petition could seek a limited conservatorship, in lieu of a guardian or full conservatorship.)

The petition for a limited conservatorship would have to specify each power requested for the conservator; the court

* We have not treated developmentally disabled minors here because the problems with minors are not necessarily the same as with adults.

could not grant certain important powers without making specific findings in regard thereto. It would also have to set out the specific disabilities of the limited conservatee. A similar approach has been tried in several other states, including Maine, Texas, and Illinois.

Recognizing that the hearing necessary for a limited conservatorship could be substantially more detailed than that in practice given for guardianships or full conservatorships, we have tried to integrate the Regional Centers for Developmentally Disabled Persons into the process.* That is, where the proposed limited conservatee consents, a Regional Center will evaluate the conservatee with an eye toward specific disability the conservatee suffers. Although the Regional Center's evaluation would not be binding upon the court, it is our belief that its input would facilitate and inform the court's decision. In addition, since at the present time a substantial number of the developmentally disabled population which might be subject to limited conservatorships are already clients of Regional Centers, we hope that the additional burden on the judicial and administrative systems will be minimized.

Because of the existence of a proposed revise Probate Code, we have had to draft two versions of our proposed statute. The first version, attached hereto as Exhibit 1, would exist as an independent chapter within the present Probate Code. The second version, attached hereto as Exhibit 2, consists of various changes and additions to the proposed revised Probate Code.

* Such Centers are established pursuant to Welfare & Institutions Code § 4620 et seq. and provide assessment and counselling services.

MODIFICATIONS TO CALIFORNIA LAW REVISION COMMISSION'S TENTATIVE
FINAL DRAFT (NOVEMBER 15, 1978) OF PROBATE CODE, DIVISION 4*

§ 1410[new] - Conservator includes limited conservator.

§ 1411[new] - Conservatee includes limited conservatee.

§ 1420[new] - Developmentally disabled adult: A developmentally disabled adult shall be as defined in § 4512 of Chapter 1, of Division 4.5 of the Welfare & Institutions Code.

§ 1431[new] - "Proceedings to establish a limited conservatorship" includes proceedings to modify or revoke the powers or duties of a limited conservator.

§ 1471(c)[new] - In any proceeding to establish a limited conservatorship, if the proposed limited conservatee has not retained legal counsel and does not plan to retain legal counsel, the court should immediately appoint the public defender or private counsel to represent the proposed limited conservatee. The proposed limited conservatee shall pay the cost for such legal service if he or she is able. This subsection (c) shall apply irrespective of any medical or psychological inability to attend the hearing on the part of the proposed limited conservatee as allowed in Section 1825.

§ 1801(d)[new] - A limited conservator of the person or of the estate, or both, may be appointed for a developmentally disabled adult.

* Modifications or additions to existing sections are underscored.

(i) Such limited conservatorships shall be utilized only as necessary to promote and protect the well-being of the individual, shall be designed to encourage the development of maximum self-reliance and independence of the individual, and shall be ordered only to the extent necessitated by the individual's proven mental and adaptive limitations;

(ii) The conservatee of the limited conservator shall not be presumed to be incompetent and shall retain all legal and civil rights except those which by court order have been designated as legal disabilities and have been specifically granted to the limited conservator;

(iii) The intent of the legislature as expressed in § 4501 of Chapter 1 of Division 4.5 of the Welfare & Institutions Code, that developmentally disabled citizens of this State receive services resulting in more independent, productive and normal lives and that such services be planned and provided as part of the continuum, shall be the underlying mandate of this Division in its application to adults alleged to be developmentally disabled;

§ 1821(h) [new] - In the case of an allegedly developmentally disabled adult a petitioner shall set forth:

(i) The nature and degree of the alleged disability, the specific duties and powers requested by or for the limited conservator, and the limitations of civil and legal rights requested to be included in the court's order of appointment;

(ii) Whether or not the proposed limited conservatee is or is alleged to be developmentally disabled.

§ 1822(e) [new] - If the petition is for the appointment of a limited conservator, the notice or notices required by this section shall include a copy of the petition.

§ 1822(f) [new] - The court shall order that notice be given to the Regional Center identified in Section 1827.5.

§ 1823(b) (2) - Such adjudication may affect or transfer to the conservator the proposed conservatee's right to contract, in whole or in part, to manage and control property, to give informed consent to medical treatment, and to fix a residence.

§ 1823(b) (5) - The proposed conservatee has the right to appear at the hearing and to oppose the petition, and in the case of an alleged developmentally disabled adult, to oppose the petition in part, by objecting to any or all of the requested duties or powers of the limited conservator.

§ 1824[first sentence] - The citation and a copy of the petition shall be served on the proposed conservatee at least 30 days before the hearing.

§ 1828(a) (5) - The nature and effect on the conservatee's basic rights of any order requested under Chapter 4 (commencing with Section 1870), and in the case of an allegedly developmentally disabled adult, the specific effects of each limitation requested in such order.

§ 1828(b)(3) - Any order requested under Chapter 4 (commencing with Section 1870), and in the case of an allegedly developmentally disabled adult, of each limitation requested in such order.

§ 1829 - A proposed conservatee, any relative or friend of the proposed conservatee, or any other interested person, including, but not limited to, any officer or agency of this state, or of the United States, or any authorized representative thereof, may appear at the hearing to support or oppose the petition, in full or in part.

§ 1827.5[new] - Assessment and Report: In the case of any proceeding to establish a limited conservatorship, within 30 days after the filing of a petition for limited conservatorship, a proposed limited conservatee, with his or her consent, shall be assessed at a Regional Center as provided for in, and in accordance with, Chapter 5 of Division 4.5 of the Welfare & Institutions Code. Such Regional Center shall submit a written report of its findings and recommendations to the court with copies to the proposed limited conservatee and to the petitioner. The report shall include a description of the proposed limited conservatee's specific areas, nature, and degree of disability, if any. The findings and recommendations of the Regional Center shall not be binding upon the court.

§ 1828.5[new] - Hearing on Limited Conservatorship:

(a) At the hearing on the petition for appointment of a limited conservator for an allegedly developmentally disabled adult, the court shall:

(i) Inquire into the nature and extent of the general intellectual functioning of the individual alleged to be developmentally disabled;

(ii) Evaluate the extent of the impairment of his or her adaptive behavior;

(iii) Ascertain his capacity to care for himself or herself and his or her property;

(iv) Inquire into the qualifications, abilities, and capabilities of the person seeking appointment as limited conservator;

(v) If a report by the Regional Center in accordance with Section 1827.5 of this Chapter has not been filed in the court because the proposed limited conservatee withheld his or her consent to assessment by the Regional Center, the court shall determine the reason for withholding such consent.

(b) If the court finds that the proposed limited conservatee possesses the capacity to care for himself or herself and to manage his or her property as would a reasonably prudent person, the court shall dismiss the petition for appointment of a limited conservator.

(c) If the court finds that the proposed limited conservatee lacks the capacity to perform some, but not all, of the tasks necessary properly to provide for his or her own

personal needs for physical health, food, clothing or shelter, or to manage his or her own financial resources, the court shall appoint a limited conservator for the person or the estate or the person and the estate, and shall define the powers and duties of the limited conservator so as to permit the developmentally disabled adult to care for himself or herself or to manage his or her financial resources commensurate with his ability to do so.

(e) Prior to the appointment of a limited conservator for the person or estate or person and estate of a developmentally disabled adult, the court shall inform the proposed limited conservatee of the nature and purpose of the limited conservatorship proceeding, that the appointment of a limited conservator for his or her person or estate or person and estate will result in the transfer of certain rights set forth in the petition and the effect of such transfer, the identity of the person who has been nominated as his or her limited conservator, that he or she has a right to oppose such proceeding, and that he or she has a right to have the matter tried by jury. After communicating such information to the person and prior to the appointment of a limited conservator, the court shall consult the person to determine his or her opinion concerning the appointment.

§ 1830(d) [new] - In the case of a limited conservator for a developmentally disabled adult, such order as the court shall make shall include the findings of the court specified in § 1828.5. Such order shall specify the powers granted to and duties imposed upon the limited conservator, which powers and duties shall not exceed the powers and duties applicable to a conservator under this code. Such order shall also specify:

(i) The properties of the limited conservatee to which the limited conservator is entitled to possession and management, giving a description of the properties that will be sufficient to identify them;

(ii) The debts, rentals, wages, or other claims due to the limited conservatee which the limited conservator is entitled to collect, or file suit with respect to, if necessary, and thereafter to possess and manage;

(iii) The contractual or other obligations which the limited conservator may incur on behalf of the limited conservatee:

(iv) The claims against the limited conservatee which the limited conservator may pay, compromise, or defend, if necessary; and

(v) Any other powers, limitations, or duties with respect to the care of the limited conservatee or the management of the above-specified property by the limited conservator which the court shall specifically and expressly grant.

§ 1851(c) [new] - In the case of a limited conservatee, the court investigator shall make a recommendation regarding the continuation or determination of the limited conservatorship.

§ 1860(c) [new] - This Section 1860 does not apply to limited conservatorships.

§ 1860.5[new] - Termination of Limited Conservatorship:

(a) Every limited conservatorship shall continue until the authority of the conservator is terminated by:

(i) The death of the limited conservator;

(ii) Subject to the duty of the limited conservator to see to the custody and conservation of the estate pending the delivery thereof to the person or representative of the limited conservatee's estate, by the death of the limited conservatee;

(iii) By an order appointing a conservator of the former limited conservatee; or

(iv) By an order of the court stating that the limited conservatorship is no longer necessary for the limited conservatee and requesting termination of the limited conservatorship.

(b) Any limited conservator, the limited conservatee or any relative or friend of the limited conservatee may apply by verified petition to the Superior Court of the County in which the proceedings are pending to have the limited conservatorship terminated or to have specific powers and duties of the limited conservatorship revoked. The petition shall state the facts alleged to establish that the limited conservatorship is no longer required. The petition shall be set for hearing and notice thereof given to the persons in the same manner as is provided in this chapter for a petition for the appointment of a limited conservator. The limited conservator in such case, if he or she is not the petitioner or has not joined in the petition, shall be served with a notice of the time and place of the hearing accompanied by a copy of the petition at least five days prior to the hearing. Such service shall be made in the same manner provided for in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court. If the limited conservator cannot, with reasonable diligence, be so served with notice, the court may dispense with such notice. The limited conservator or any relative or friend of the limited conservatee may appear and oppose the petition. The court shall hear and determine the matter according to the laws and procedures relating to the trial of civil action, including trial by jury if demanded. If it is determined that the limited conservatorship is no

longer required, the limited conservatorship shall cease. If the petition alleges and if it is determined that the limited conservatee is able to properly care for himself or herself and for his or her property, the court shall make such finding and enter judgment accordingly. The limited conservator may at the hearing, or thereafter on further notice and hearing, be discharged and his or her bond exonerated upon the settlement and approval of his final account by the court.

§ 1872(a) [new last sentence] - This Section 1872(a) does not apply to limited conservatees.

§ 1872(c) [new] - Except as otherwise provided in the order of the court appointing a limited conservator, such appointment does not limit the legal capacity of the limited conservatee to enter into transactions or types of transactions.

§ 1873(a) - The court may by order modify the legal capacity a conservatee would otherwise have under § 1872(a) by broadening or restricting the power of the conservatee to enter into such transactions or types of transactions as may be appropriate in the circumstances of the particular conservatee and conservatorship estate.

§ 1890(a) - An order of the court under this Chapter may be included in the order of appointment of the conservator if the order was requested in the petition for the appointment of the

conservator or, except in the case of a limited conservator, may be made subsequently upon a petition made, noticed, and heard by the court in the manner provided in this article.

§ 1890(b) [new] - In the case of a petition filed under this chapter requesting that the court make an order under this chapter or that the court modify or revoke an order made under this chapter, when such order applies to a limited conservatee, such order may only be made upon a petition made, noticed, and heard by the court in the manner provided by Article 3 of Chapter 3 of this Part.

§ 2351(a) - The guardian or conservator, but not the limited conservator, has the care, custody, and control of, and has charge of the education of, the ward or conservatee.

§ 2351(b) [new] - The limited conservator has the care, custody, and control of the limited conservatee, except that a limited conservator shall not have any of the following powers or controls over his limited conservatee unless such powers or controls are specifically requested in the petition for appointment of limited conservator and granted by the court in its order appointing the limited conservator:

(i) To fix the residence and/or specific dwelling of the limited conservatee;

(ii) Access to the confidential records and papers of the limited conservatee;

(iii) To consent or withhold consent to the marriage of the limited conservatee;

(iv) The right of the limited conservatee to contract;

(v) The power of the limited conservatee to give or withhold medical consent;

(vi) The limited conservatee's right to control his own social and sexual contacts and relationships;

(vii) Decisions concerning the education of the limited conservatee.

The limited conservator shall secure for the limited conservatee such habilitation or treatment, training, education, medical and psychological services, and social and vocational opportunity as are appropriate and as will assist the limited conservatee in the development of maximum self-reliance and independence.

§ 2351(c)[new] - Any limited conservator, the limited conservatee, or any relative or friend of the limited conservatee may apply by verified petition to the Superior Court of the county in which the proceedings are pending to have the limited conservatorship modified by the elimination or addition of any of the powers which must be specifically granted to the limited conservator pursuant to Section 2351(b) above. The petition shall state the facts alleged to establish that the limited conservatorship should

be modified. The granting or elimination of such powers shall be discretionary with the court.

The petition shall be set for hearing and notice thereof given to the persons in the same manner as is provided in this chapter for a petition for the appointment of a limited conservator. The limited conservator, if he is not the petitioner or has not joined in the petition, shall be served with a notice of the time and place of the hearing accompanied by a copy of the petition at least five days prior to the hearing. Such service shall be made in the same manner provided for in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court. If the limited conservator cannot, with reasonable diligence, be so served with notice, the court may dispense with such notice. The limited conservator or any relative or friend of the limited conservatee may appear and oppose the petition. The court shall hear and determine the matter according to the laws and procedures relating to the trial of civil action, including trial by jury if demanded. If any such powers are granted or eliminated, new letters of limited conservatorship shall be issued reflecting such change in the limited conservator's powers.

§ 2401(a) - The guardian or conservator, or limited conservator to the extent specifically and expressly provided in the appointing court's order, has the management and control of the estate and, in managing and controlling the estate, shall use

ordinary care and diligence. What constitutes use of ordinary care and diligence is determined by all the circumstances of the particular estate.

§ 2405[first sentence] - If the guardian or conservator, or the limited conservator to the extent specifically and expressly provided in the order appointing said limited conservator, doubts the correctness of any claim against the ward or conservatee or the estate or rejects a claim against the ward or conservatee or the estate, the guardian, conservator, or limited conservator may do either of the following:

§ 2400(a) - "Conservator" means the conservator of the estate, or the limited conservator of the estate to the extent that the powers and duties of said limited conservator are specifically and expressly provided by the order appointing said limited conservator.

§ 2600(a) - "Conservator" means the conservator of the estate, or the limited conservator of the estate to the extent that the powers and duties of said limited conservator are specifically and expressly provided by the order appointing said limited conservator.

§ 3004 - "Conservator" means conservator of the estate, or limited conservator of the estate to the extent that the powers and duties of said limited conservator are specifically and expressly provided by the order appointing said limited conservator, and includes the guardian of the estate of a married minor.