

**Ruling on Respondent's Motion for Judgment on the Pleadings**

Respondent has filed a motion for Judgment on the Pleadings, on the grounds that and are not the real parties in interest, and as parties who lack standing must be dismissed. The motion is also based on the ground that since neither or are authorized to practice law in California they cannot act as representatives for their adult daughter,

In response to the motion, has filed a letter, dated March 8, 2016, asserting that her "parents and conservators" and would be her "agents during the lawsuit", but would not represent her nor provide legal advice. They propose to help Ms. with "communication and expression" and act only with her permission. Further, the letter states that is "the only plaintiff, and I am not being legally represented by anyone except by myself, yet I will have my agents with me throughout the process and my sister for translation purposes only."

The Arbitrator issued a Tentative Ruling on March 10, 2016, requesting, among other things that the parties supply the Arbitrator with authorities with respect to the legal ability or standing of conservators to file a demand for arbitration, and whether such conservators have legal authority to assert claims on behalf of their conservatee.

The Arbitrator also requested that the parties provide authority on the issue whether the conservators must be represented by counsel.

In response to the Tentative Ruling, the Arbitrator was provided with the following:

From Mr. and Mrs.

A letter dated March 11, 2016, attaching thereto Letters of Conservatorship dated June 12, 2013.

From Respondent:

1. Respondent, Response to Arbitrator's Tentative Ruling on Respondent's Motion and Motion for Judgment on the Pleadings;
2. Respondent, Request to Take Judicial Notice.

After review of the documentation submitted by the parties, the Arbitrator rules as follows:

1. The Arbitrator can find no legal authority to support the conclusion that currently, Mr. and Mrs. have sufficient authority, in their capacities as Conservators, pursuant to the Letters of Conservatorship and the Order upon which the Letters were issued, to maintain the current action, and therefore they lack standing to sue in such representative capacity.

2. Mr. and Mrs. \_\_\_\_\_ assert that they are not pursuing claims in their individual capacities.
3. \_\_\_\_\_ lacks the capacity to represent herself, as reflected in the Letters of Conservatorship and in the Petition for Appointment of Probate Conservator. It appears from the Petition for Appointment of Probate Conservator that,

“The proposed conservatee is developmentally disabled. \_\_\_\_\_ was born with Cerebral Palsy and has a mental capacity of about 4 years of age. Proposed conservatee is unable to provide for her own physical needs such as health, food, clothing or shelter and lacks capacity to authorize her own medical treatment.”

Under these circumstances, it is the Arbitrator’s conclusion that \_\_\_\_\_ simply cannot represent herself in this matter, as she lacks the capacity to do so.

4. The letter of March 8, 2016 purporting to appoint \_\_\_\_\_ parents as her “agents” to pursue this action, is without legal significance as \_\_\_\_\_ is legally incompetent to execute such a document. In any event even as “agents, conservators and parents” Mr. and Mrs. \_\_\_\_\_ cannot represent \_\_\_\_\_ without an attorney licensed to practice law in the State of California. Therefore, even if \_\_\_\_\_ had the legal ability to contract and/or appoint her parents as her “agents”, since neither of them are licensed attorneys, they may not act in the capacity of “agent” without violating the prohibition on practicing law without a license.
5. Since \_\_\_\_\_ cannot represent herself, and her parents lack the legal capacity to act as her “agents” without violating the prohibitions contained in the Business & Professions Code of California with regard to the unauthorized practice of law, unless Mr. and Mrs. \_\_\_\_\_ obtain an order from the Superior Court of the State of California appointing them or either of them as guardians ad litem, or a further order from the court conferring upon them, as Conservators, the power and authority to maintain this action, on or before May 15, 2016 (or such other date as may be extended by this Arbitrator), and move to amend the Demand for Arbitration to substitute in themselves or another person with proper legal capacity, the Motion for Judgment on the Pleadings will be granted. If an order appointing a guardian ad litem for \_\_\_\_\_ or by order of the Superior Court the Conservators are granted the power to bring this action, the Arbitrator will entertain a motion to amend the Demand for Arbitration to substitute a party with standing as Claimant in this matter. In such event, those granted the power by the court must be represented by an attorney duly licensed to practice law in California.
6. The Status Conference scheduled for April 7, 2016 at 9:30 a.m. will remain on calendar. At that time, claimants will have the opportunity to provide the Arbitrator and Respondents with anything bearing on the issues of this motion, and to advise the Arbitrator and Respondents as to whether it is the intention of Claimant to retain the services of counsel, and comply with the other requirements of this ruling.

## DISCUSSION

The Demand for Arbitration is filed by "Mr. and Mrs. [redacted] Legal Representatives of [redacted] Respondent argues (page 2 ¶4 of Response to Arbitrator's Tentative Ruling) that "Ms. [redacted] cannot represent herself since she is incompetent to do so." Respondent also argues that "Neither [redacted] nor [redacted] are the real party in interest in this matter." The latter statement may be true with respect to the conservators pursuing their individual claims (which Mr. and Mrs. [redacted] assert they are not doing). However, they may have the legal right to pursue claims on behalf of their conservatee. In the Tentative Ruling the Arbitrator stated:

"It appears from the Demand that Mr. [redacted] and Mrs. [redacted] are the conservators of [redacted]. The Arbitrator has been provided with no authorities with respect to the legal ability or standing of conservators to file a demand for arbitration, or whether such conservators have the legal authority to assert claims on behalf of their conservatee, much less whether conservators who do so are engaging in the practice of law."

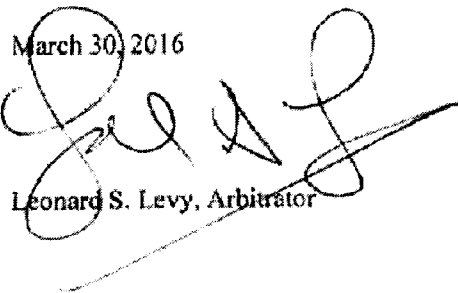
The Arbitrator has now been provided with authority (*J.W. v Superior Court* (1993) 17 Cal.App.4<sup>th</sup> 958) which leads to the conclusion that the conservators, whether as "agents" or as conservators would be engaging in the unauthorized practice of law if this arbitration were to be pursued without attorney representation. Therefore, this matter cannot proceed unless the conservators (if they have the power to pursue this action) are represented by an attorney licensed to practice law in the State of California.

On the issue of whether the conservators, in that capacity, lack standing to bring this action, Respondent asserts that, "A conservator, such as [redacted] and [redacted], may not file a demand for arbitration, nor act in a representative capacity on behalf of [redacted] citing *J.W. v Superior Court, supra*. That case addresses the inability of a general guardian to pursue an action in *propria persona*, in the capacity of guardian, and concludes that such a guardian must obtain representation of counsel. It is the Arbitrator's conclusion that the requirement of counsel aspect of the *J.W. v Superior Court* case applies equally to a conservatorship situation as it does to a guardianship.

That case does not address, however whether, if such counsel is obtained, a conservator, such as [redacted] and [redacted] may "file a demand for arbitration, nor act in a representative capacity on behalf of [redacted]." That would depend upon the powers granted to a conservator, either in the order creating the conservatorship, by statute, or both. An examination of the Order and the Letters of Conservatorship does not reveal the right or power of the Conservators to bring a legal action on behalf of the conservatee [redacted]. While the order and Letters do contain language giving the Limited Conservators "the authority to control the right of the conservatee to contract", this is not the same as the right to bring an action, whether in the form of an arbitration or a Superior Court action for damages for personal injury or any other purpose. The Arbitrator was unable to find any authority, and was not given any by the parties, to support the proposition that the Conservators in this matter have such power.

Therefore, unless the Claimant or her Conservators provide the Arbitrator with legal authorities demonstrating that by virtue of the conservatorship, the Conservators presently have the legal power to bring an action on behalf of \_\_\_\_\_ the Arbitrator requires that \_\_\_\_\_ or her conservators obtain a court order granting the conservators that power, as set forth above. In the absence of either such legal authorities or an order from the Superior Court *and* representation by counsel, this matter cannot proceed further.

**Nothing in this Arbitration decision prohibits or restricts the enrollee from discussing or reporting the underlying facts, results, terms and conditions of this decision to the Department of Managed Health Care.**

March 30, 2016  
  
Leonard S. Levy, Arbitrator

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5 (310) 201-0010 PH  
6 (310) 201-0016 FAX

ADR SERVICES, INC.

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8 Claimant,

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10 vs.

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14 Respondent.

) ADRS Case No. 16-0250-LSL  
) No. 13844  
) **BINDING ARBITRATION AWARD AND**  
) **ORDER DISMISSING ARBITRATION**  
) **WITHOUT PREJUDICE AND**  
) **VACATING SCHEDULED HEARING**  
) **DATES**  
) Leonard S. Levy, Esq.,  
Arbitrator.

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17 On May 17, 2016, the Arbitrator issued an order which provided as follows:

18 **“IT IS THEREFORE ORDERED AS FOLLOWS:**

19 **“The Arbitration Management Conference is hereby continued to July 25, 2016, by**  
20 **telephone. Call in information will be furnished to the parties by the office of the**  
21 **Arbitrator.**

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24 **“Pursuant to the Arbitrator finds good cause to extend the Arbitration**  
25 **Management Conference deadline. The deadline to complete the Arbitration**  
26 **Management Conference is extended to Monday, August 1, 2016. However, the**  
27 **Arbitration Management Conference will take place on July 25, 2016.**  
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"Claimant is required to comply with paragraph 5 of the March 30, 2016 order, on or before July 18, 2016. That order states:

'Since \_\_\_\_\_ cannot represent herself, and her parents lack the legal capacity to act as her "agents" without violating the prohibitions contained in the Business & Professions Code of California with regard to the unauthorized practice of law, unless, Mr. and Mrs. \_\_\_\_\_ obtain an order from the Superior Court of the State of California appointing them or either of them as guardians ad litem, or a further order from the court conferring upon them, as Conservators, the power and authority to maintain this action, on or before May 15, 2016 (or such other date as may be extended by this Arbitrator), and move to amend the Demand for Arbitration to substitute in themselves or another person with proper legal capacity, the Motion for Judgment on the Pleadings will be granted. If an order appointing a guardian ad litem for \_\_\_\_\_ or by order of the Superior Court the Conservators are granted the power to bring this action, the Arbitrator will entertain a motion to amend the Demand for Arbitration to substitute a party with standing as Claimant in this matter. In such event, those granted the power by the court must be represented by an attorney duly licensed to practice law in California.'

"The Arbitrator hereby extends to July 18, 2016, the May 15, 2016 date set forth in the paragraph immediately preceding.

**Claimant is ordered to inform Respondent and the Arbitrator (through Arbitrator's Case Manager), on or before July 18, 2016 that Petitioner will be participating in the July 25, 2016 Arbitration Management Conference, through an attorney retained to act on behalf of \_\_\_\_\_"**

On July 14, 2016, the Arbitrator and counsel for the Respondent received the following email on behalf of Claimant:

1 "We have not had any luck in regards to retaining a lawyer. We get the appointments, they  
2 review and nothing afterwards. We did however find a lawyer who was willing to accept  
3 the case when we met on Monday, but due to the deadline she decided to not represent us.  
4 Especially since there is certain document that we had not heard of before we met with her  
5 that needs to be filled out before she could even proceed.

6 "If there is any possibility for us to be able to put the case on hold in order for us to keep  
7 looking for a lawyer, that would be greatly appreciated. The deadline for the lawyer to be  
8 retained and be in contact with ADR is this Monday and with how things are going we  
9 will not be able to meet that deadline.

10 "It has been a difficult task that we are trying to meet, but have not had any luck in doing  
11 so.

12 "We hope you and Mr. [redacted] can take this email in consideration. We would have like for  
13 this case to have been resolved without so many delays, yet we cannot seem to find that  
14 one lawyer just yet that will take our case. Putting this case on hold would be greatly  
15 appreciated, rather than having it closed.

16 Thank you,

17 On July 15, 2016, the Arbitrator and Claimant received an email from Mr. [redacted]  
18 representing Respondent, objecting to any further continuance. In said email, Mr. [redacted] recited  
19 the history of rulings by the Arbitrator, and the extensions of more than four months granted by  
20 the Arbitrator to Claimant to afford Claimant the opportunity to have a guardian ad litem  
21 appointed, and to obtain legal representation. Mr. [redacted] also argued that, "Because permitting  
22 this claim to go forward would be to condone the unauthorized practice of law in this State as  
23 outlined in the legal authorities provided to the neutral in March, Respondent respectfully urges  
24 the neutral Arbitrator to dismiss this claim now before any further expense is incurred."

25 It is the ruling of the Arbitrator that Claimant has been afforded ample time to obtain the  
26 services of an attorney, move for the appointment of a guardian ad litem, and to otherwise comply  
27 with the orders of the Arbitrator. While the Arbitrator believes that Claimant has made efforts to  
28 comply with such orders, and that the failure to comply is not willful, the Arbitrator is also aware  
that Respondent is incurring fees and expenses in relation to this matter. Therefore, the Arbitrator  
cannot grant the request of Claimant that the case be put "on hold in order for [Claimant] to keep

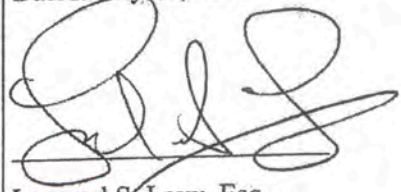
1 looking for a lawyer." Such an order would be prejudicial to Respondent, and would not be in  
2 accordance with the rules, including Good cause has not been shown to further  
3 extend the Arbitration Management Conference date any further.

4 **IT IS THEREFORE ORDERED** that this arbitration is dismissed without prejudice for  
5 failure to comply with paragraph 5 of the March 30, 2016 order by July 18, 2016. The July  
6 25, 2016 Arbitration Management Conference hearing date is vacated.

7 Each side is to bear their own costs.

8 **NOTHING IN THIS ARBITRATION DECISION PROHIBITS OR RESTRICTS THE**  
9 **ENROLLEE FROM DISCUSSING OR REPORTING THE UNDERLYING FACTS,**  
10 **RESULTS, TERMS AND CONDITIONS OF THIS DECISION TO THE DEPARTMENT**  
11 **OF MANAGED CARE.**

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14 Dated: July 19, 2016

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18 Leonard S. Levy, Esq.,  
19 Arbitrator.