NASGA

National Association to Stop Guardian Abuse

Via Hand Delivery

Hon. Ronald M. George, Chief Justice
and Associated Justices
California Supreme Court
350 McAllister Street, Suite 1295
San Francisco, CA 94102

December 8, 2006

Re: *Golin v Superior Court of Sacramento County (Allenby)*, (Petition for Review filed November 30, 2006, California Supreme Court No. S148450, California Court of Appeal No. C054107)

To The Honorable Chief Justice George and Associated Justices:

This letter of amicus curiae in support of a petition for review is respectfully submitted by NASGA, the National Association to Stop Guardian Abuse.

I. Nature of Interest of Amicus

As President of NASGA, a national advocacy and self-help civil rights organization dedicated to the protection of elderly and disabled adults from exploitation by sometimes unlawful and abusive court- appointed fiduciaries in private and public guardianship/conservatorship care, I am writing on behalf of my organization, pursuant to California Rules of Court, Rule 28(g), to ask you grant review in the above entitled case.

NASGA is based in California with offices in Indiana and Massachusetts. Our membership is comprised of victims and their families from more than 17 states across the country who have watched their loved ones suffer as they were exploited and injured while under guardianship control. Because my father was exploited by members of the Florida guardianship system to the cost of nearly $500,000.00 over an 18-month period, I formed the National Association to Stop Guardian Abuse to unite other similar organizations, victims and their families in a combined effort to put an end

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to inappropriate use of the law which encourages this system of legalized theft and deprivation of Constitutional rights. NASGA encourages reform of the guardianship and conservatorship legal system and seeks to raise awareness of the current epidemic of abuse and exploitation in senior and adult dependent care.

NASGA has documented disturbingly similar patterns of abuse in hundreds of cases across the country, still largely underreported in the media. NASGA is working to correct this lack of awareness.

Some of the characteristics of this systematic abuse are: 1) financial exploitation by the private or public conservator, 2) removal of the ward from his or her home, 3) elimination of family members from their protective roles, 4) isolation of the ward from his or her family by misuse of probate court processes, 5) maligning by public or private guardians of family members to discredit, defame, stigmatize and neutralize anyone who tries to intervene or interfere to stop the abuse, 6) extreme double standards or institutional bias against family vs. guardian, i.e., the family can do no right - the guardian or state can do no wrong, in the eyes of the courts, 7) the ward becomes a virtual prisoner whose life, property and liberty is under the complete control of the court appointed guardian, 8) all of the ward's assets, and property are converted, and income taken and sold to benefit the guardian and their allies including attorneys, judges, caregivers, nursing home operators and others, 9) abuse and neglect often lead to death of the ward through neglect when the ward's money runs out, 10) unnecessary imposition of burdensome and restrictive supervised visitation or no contact requirements by guardians interfering with contacts between lifelong intimate family members against the will of the ward, 11) unscrupulous retaliation against the victims, both family and wards, for attempts to expose abuse or interfere to aid the abused wards, supposedly in the ward's "best interests." The victimization thereby spreads from the ward to their families, incapacitating them in futile legal struggles for years, draining any remaining assets and causing years of emotional distress to everyone related to the victim, including children and grandchildren.

Recent groundbreaking investigative studies in the LA Times four-part series, "Guardians for Profit"[1], as well as a new AARP study "Who is Guarding the Guardians"[2] and many others, have recently drawn public attention to the problems of abuse by private and public conservators leading to increased legislative action and several criminal indictments, but it is only a band-aid resolution to a bleeding artery problem. NASGA has documented the same *modus operandi* of this national nightmare which is posted on our website: http://stopguardianabuse.org and fully documented in

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my
recently published memoir, "Blood Tastes Lousy With Scotch"[3].

In many states, there is no licensing control, oversight or penalties for statutory violations other than the probate courts, which have proven ineffective in managing and overseeing these conservatorship cases[4]. Recent reforms in California through the passage of a series of seven bills in 2006[5], spurred by the LA Times series[6] and the Probate Conservatorship Task Force which you yourself, Chief Justice George, so admirably spearheaded, are certainly starting in the right direction for the future here in California. NASGA believes from our surveys there is much more to do, and it is premature to congratulate ourselves on the legislation. SB 1550, for example, can do little to aid the widespread victims of *public* conservators that we are documenting here and now. No one can license them, because they *are* the system, and yet public conservators are key abusers.

NASGA seeks to raise public awareness of this problem and is making significant inroads. We applaud with great interest the recent exposures of scandals in the public conservator's office in Ventura County, bringing indictments by the Grand Jury and prosecutions by the District Attorney[7] for fraud and theft, which have helped bring increasing public attention to underreported problems in the *public* sector. District Attorneys are starting to take note of these crimes. We welcome this long-overdue attention needed to spur even more effective conservatorship reforms.

These public guardians are, in too many cases, more dangerous to elders and dependent adults than private ones, because they can entrench themselves to a greater degree in our judicial system and state agencies, thereby evading review. Thus, NASGA's interest in this case.

II. Why this Court Should Grant Review

The central question before this Court is one that is crucial to thousands of wards in state facilities, whether a family civil litigant may find alternative relief in a neutral civil court, for harms and injuries caused by an entrenched public conservator in probate courts that have abandoned their responsibility to protect.

How can an abused ward ever escape from "the system" with the help of friends and family, when the conservator is holding hostage all the ward's powers? Can equitable and civil relief be found in a civil lawsuit for damages, injuries, torts and

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constitutional deprivations when all attempts to prevent judicial and fiduciary noncompliance with law in probate have fallen on deaf ears?

The Golins' case is unfortunately not at all unusual, from our experience, although it is in some ways one of the worst we have witnessed. We have seen all of this before, in case after case across the country. The pattern is very familiar to NASGA.

One of NASGA's primary objectives is to increase exposure and public confidence that the conservatorship abuse problems *can* be addressed effectively in our court system, because without this confidence most families will huddle in fear, simply too terrified to fight the system, believing they and their families will be the next victims, and there will be no legal relief available to them. One of the earmarks we frequently see of these public offenders is their willingness to resort to ruthless retaliation against those who attempt to interfere with their businesses. Most families faced with such official misconduct lack the personal and financial resources to oppose the serious injustices that the Golins, I and others in NASGA have faced. The more of us who come forward, the more the fear will abate. As long as these injustices are tolerated and often even abetted in our courts, the longer the public at large will continue to be cowed, emboldening the perpetrators to more nefarious activities, with no detection and punishment for their crimes. Now that our organization is bringing overdue media attention to these issues, we feel we are making progress in encouraging others to come forward. The Golins have continued tirelessly against great odds to competently train themselves in legal matters and advocate for their daughter's rights, and this alone qualifies them uniquely as advocates and guardians ad litem for Nancy. The Golins' willingness to put themselves on the line for their conserved daughter represents an opportunity for this Court to help meet this challenge.

A. *Why this case is important*

The Golins appear here appealing to this Court from two adverse interlocutory decisions in their civil lawsuit against their daughter's state conservator for damages, each of which is crucial if their case is to move forward at all in a fair proceeding. One seeks to retain the case in Sacramento County where they *have* filed in a proper neutral opening venue, preventing the case from going back to Santa Clara County. The other seeks to reinstate Mrs. Golin as her daughter's guardian ad litem, after her GAL powers were improperly removed by the respondent court in a clash with the powers of the state conservator.

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The Court of Appeals, in denying the Golins' writ petition thereby affirming the opinion of the respondent Court, misread controlling case law and statutes to fatally impair their cause in the forthcoming trial proceedings. Judicial notice by the respondent court of this 2003 probate decision[8] for the truth of the matter to remove Mrs. Golin without advance notice being given was clearly improper by controlling 9thCircuit law, after *Lee v. City of Los Angeles,* 250 F.3d 668, 688-691 (9th Cir., 2001), and by Evid. Code §453(a). There is no case or statute requiring a plaintiff to give notice or afford a defendant an opportunity to object to the appointment of a guardian ad litem for the plaintiff. The Court must settle the issue that the guardian ad litem's powers be given deference over the powers of the conservator when the two come into conflict in a civil proceeding, when the conservator is charged with misusing his powers to infringe on the ward's inviolable constitutional and civil rights. No trial court can sensibly grant a *defendant's* claim to a right to represent, or choose a guardian ad litem for, an injured *plaintiff* in a lawsuit, as these public officials have just done, no matter what conservatorship powers were granted then in another subject-matter jurisdiction.

The Golins are attempting to proceed in civil court to correct wrongs committed against them and their daughter in probate during the past five years, and issues which have never been adjudicated. In October 2003, a probate court in Santa Clara County granted custody of Nancy Golin to the State of California, issuing one of the most biased and one-sided opinions we have witnessed. The opinion itself has never been reviewed, and the facts the probate court claims it found have been proven to be of a highly dubious quality. It has thus far been exploited by the local conservators at every turn to taint and demonize the Golins, to prevent them from interfering with the conservators.

Our organization is also receiving unverified reports we wish to investigate that these conservatorships are offering disturbing new opportunities to criminals for a wide spectrum of white-collar crime including identity-theft, embezzlement, money laundering, compromising of public officials, and shady escrow and real estate deals, because of the inability of inquirers to exert oversight due to alleged privacy concerns, isolation of the conservatee and control of records. If confirmed, this would explain the entrenched resistance to releasing the wards from their involuntary incarceration to their families, because of risk of exposure. Whether these illicit opportunities are being utilized by white-collar criminals or not remains to be seen, but the temptation for abuse is there. This is why this case is so important; to give us the opportunity to investigate and examine what is really going on. Greater court oversight cannot work without public participation, and we feel families and the civil courts are the best place to start,

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without having to pass new laws. When overseeing state agencies, effective litigation - not just oversight - is necessary to make these laws work, and we are not finding it in our probate courts.

B. The Golins' issues are fundamental and important legal questions of first impression deserving this Court's review.

The Golins in this case have a reasonable past basis on which to form an inference of non-neutrality in the transferee court, sufficient to defeat a motion to transfer to that venue for the purpose of pursuing *another* change of venue under Cal. Code Civ. Proc. §397(b) back to a *third neutral* court, without having to go to the very court they suspect of bias to pursue it, as proffered by the respondent court. Obtaining and keeping a proper neutral venue free from local prejudice has been one of the most perplexing problems affecting the cases we have reviewed. In the Riverside County cases[9], we noted that it became necessary to bring in outside public defenders to investigate and curtail abuses in the neglectful probate courts, because of the strong and "incestuous" ties between the local bar and the judiciary.

The answer requirement provision of Cal. Code Civ. Proc. §396b(d) has no known, contemplated or conceivable legislative purpose, apart from the "convenience of witnesses" provision in that subsection. It is the only statutory relief that the legislature has provided for an aggreived plaintiff to assert what this Court has previously held to be his fundamental and absolute right to retain venue in a fair and impartial court. Thus it must be inferred that the Legislature had intended this subsection to provide relief in circumstances such as these. Thus, we feel it is reasonable that the Golins merely ask this Court to settle the question whether the answer requirement can be inferred not to apply to the "ends of justice" provision of that clause when it the ends of justice are construed to constitute retention of a fair and impartial venue[10]. Thus the fundamental assurance to the "right of *all parties* to a fair and impartial proceeding in a neutral venue" *(People v. Ocean Shore Railroad, Inc.* (1938) 24 Cal.App.2d 420, 423 [75 P.2d 560] may be most easily provided to a plaintiff seeking to retain venue in a proper neutral opening venue, as here by the Golins, by the provision of Cal. Code Civ. Proc. §396b(d).

The Golins have continued seeking to assist their daughter in gaining her release from unlawful and abusive state custody. The 2003 Santa Clara Superior Court probate opinion has blocked the Golins from proceeding in federal court, before any review on the merits has ever been reached, and threatens to do so again, despite many legal precedents to the contrary. The Golins also need to recover their financial losses.

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This has led the Golins to form a reasonable belief that no proceeding which threatens these influential and entrenched state, local and agency defendants with the scandal that they know could result from open disclosure there has any chance of a fair trial in Santa Clara County. They seek this Court's reversal of the respondent court's grant of a change of venue to Santa Clara County, affirmed by the Court of Appeal. The state, county and agency probate conservators have unseated Mrs. Golin's guardian ad litem appointment to represent her daughter in this lawsuit just when she was making important investigatory discoveries. Without effective representation Nancy's case will again go nowhere.

The Golins seek reversal of that venue removal here, to sustain their cause in a neutral venue with themselves representing their daughter's claims against the conservator. In other words, the Golins are seeking to sue their daughter's conservator civilly for damages and injunctive relief. There is no statutory mandate that opposes this action. Seeking to give Nancy what she has never been given thus far – representation by genuinely interested parties other than these defendants.

Such an alternative approach is desperately needed by thousands if not hundreds of thousands of elders and dependent adults and their families trapped in public guardianships. The law[11] provides a facial avenue for relief to challenge the thus-far almost unchallengeable powers of a public conservator, through exerting powers of guardian ad litem in a civil proceeding. This may be a unique solution because we can find no other case that deals with this specific question, nor can we find any case that forbids it. If this alternative avenue for relief were established, many of the cases we have documented more easily could have been remedied.

Without review, this tragic miscarriage of justice will continue and Nancy Golin will permanently remain a state prisoner. Habeas review has already been refused by a federal district court on the same patently absurd basis, that the state appears to be the only party that has standing to represent Nancy to oppose her state custody[12]. Margaret Dore, noted Seattle conservatorship attorney, after reviewing the Golins' case, commented to us her firm belief that, while terribly unjust, "Nancy has fallen into a black hole from which there is no escape." This Court must not allow this to be so, either for her or for the legions of other Nancys in similar circumstances for whom our association advocates.

Withholding justice in cases like this only serves to undermine public confidence in the integrity of the judicial system, without which no court can exercise its authority. This case gives this Court a unique chance to restore that confidence.

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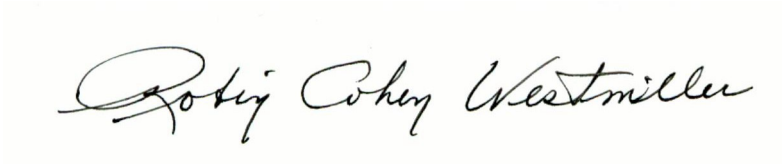
III. Conclusion

For the foregoing reasons, the Court should grant the petition for review.

Respectfully submitted,



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Robin C. Westmiller, President
National Association to Stop Guardian Abuse

ENDNOTES:

[1] "Guardians for Profit," Los Angeles Times, by Robin Fields, Evelyn Larrubia and Jack Leonard, four part series, November 13-16, 2005.

[2] "Guardianship Monitoring: A National Survey of Court Practices," AARP Report #2006-14, June 2006, by Naomi Karp, AARP Public Policy Institute, and Erica Wood, ABA Commission on Law and Aging. See also press release, "In Brief: Guardianship Monitoring: A National Survey of Court Practices, Research Report," Naomi Karp, ABA Commission on Law and Aging, Erica F. Wood, American Bar Association, June 2006, Public Policy Institute, AARP, 601 E Street, NW, Washington, DC 20049, available online at http://www.aarp.org/research/legal/guardianships/inb126_guardianship.html.

[3] "Blood Tastes Lousy With Scotch," by Robin Cohen Westmiller, Star Publishing Co., June 2006, ISBN 1932993436.

[4] "Justice Sleeps While Seniors Suffer," Los Angeles Times, by Robin Fields, Evelyn Larrubia and Jack Leonard, November 14, 2005.

[5] California Assembly Bill, AB 1363 (Jones) (private conservator oversight), AB 2494 (Ridley-Thomas), AB 3048 (Dymally), : Omnibus Conservatorship and Guardianship Reform, California Senate Bills; SB 1116 (Scott) (sale of homes), SB 1550 (Figueroa) (private licensing), SB 1716 (Bowen) (court review), AB 2836 (Karnette) (fire extinguishers).

[6] "Task Force Urges Reform of State's Guardian System," Los Angeles Times, Jack Leonard, February 4, 2006, "Conservator Panel Will Hear From the Public," Los Angeles Times, Robin Fields, March 17, 2006, http://www.latimes.com/news/local/la-me-conservator17mar17,0,6642323.story

[7] News Release by Ventura County Office of the District Attorney, November 20, 2006, Release No. 06-115, available online at http://da.countyofventura.org/06-115.htm.

[8] *Conservatorship of Nancy Golin*, Santa Clara Probate Case No. 1-02-PR-01796.

(continued)

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[9] "Guardian Angels," by Christopher Manes, in California Lawyer, January 1, 2000.

[10] Cal. Code Civ. Proc §396b(d): "In any case, if an answer is filed, the court may consider opposition to the motion to transfer, if any, and may retain the action in the county where commenced if it appears that the convenience of the witnesses *or* the ends of justice will thereby be promoted." (Ital. added).

[11] Cal. Code Civ. Proc.§372(a), 373(b).

[12] *"It would thus appear that respondent [state], if anyone, would have standing to challenge Nancy's [state] custody (assuming she is in custody)"(NDCa* No. C 03-05855 WHA, Order Dismissing Petition for Habeas Corpus, April 6, 2004, Hon. William H. Alsup, pres.) (brackets added).

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