



Disability and Guardianship Project

1717 E. Vista Chino A7-384, Palm Springs, CA 92262
(818) 230-5156 • www.spectruminstitute.org

July 1, 2020

Hon. Tani Cantil-Sakayue
Chief Justice of California / Chairperson of the Judicial Council
350 McAllister Street
San Francisco, CA 94102

Re: *Capacity Assessments in California Conservatorship Proceedings*
A Report to the Chief Justice, Governor, and Legislature

Dear Chief Justice / Madam Chairperson:

The enclosed report is being sent to you in your administrative capacity as Chief Justice of the California Supreme Court and as Chairperson of the California Judicial Council. Please share this report with members of both of these entities since some of its recommendations are directed to each of them.

The people of the State of California will be celebrating Independence Day on July 4. Independence has great meaning not only for a nation such as the United States of America, but also for the individuals who collectively form and govern it. Having said that, there are tens of thousands of seniors and people with developmental and other disabilities in California who are not in a position to celebrate their independence. These individuals lost their personal autonomy when superior court judges entered orders taking away many of their freedoms. Thousands of others whose cases are in pre-adjudication stages also have no grounds for celebration. Their cherished liberties have been placed in jeopardy with no guarantee they will receive access to justice during the legal process.

The issue of legal capacity for decision-making forms the very foundation on which the probate conservatorship system rests. Unfortunately, the enclosed report – based on 15 months of analysis of constitutional requirements, statutory standards, and judicial, legal, and professional practices – shows this foundation to be fundamentally flawed. Current capacity assessment standards and practices need a thorough review by officials in all three branches of state government.

Recommendations in the report have been made to guide state officials on ways to bring this foundational aspect of the conservatorship system into conformity with the requirements of due process and the mandates of state and federal nondiscrimination laws. We urge you, the governor, and leaders in the legislative branch to take the necessary actions to bring about such a result.

Respectfully,

Thomas F. Coleman
Legal Director

cc: Governor Gavin Newsom
Assembly Speaker Anthony Rendon; Senate President Pro-Tem Toni Atkins



Disability and Guardianship Project
Disability and Abuse Project

555 S. Sunrise Way, Suite 205 • Palm Springs, CA 92264
(818) 230-5156 • www.spectruminstitute.org

April 18, 2019

Hon. Tani Cantil-Sakayue
Chief Justice of California
Chairperson of Judicial Council
350 McAllister Street
San Francisco, CA 94102

Re: Follow up to letter of November 12, 2018 regarding Administrative Steps
to Improve California's Probate Conservatorship System

Dear Chief Justice / Madam Chairperson:

On November 12, 2018, I wrote to you with several concerns and requests. This letter was submitted for your administrative docket as Chief Justice of the Supreme Court or as Chairperson of the Judicial Council. A copy of that letter is enclosed.

I also submitted a report that documented these concerns and requests in greater detail. The report was titled "Administrative Steps to Improve California's Probate Conservatorship System." It is found online at: www.spectruminstitute.org/steps

The tracking service of the postal service confirms that the letter was delivered to the court. However, I have not received any communication from your or anyone at the Supreme Court or Judicial Council acknowledging receipt of these documents and indicating what action, if any, will be taken.

I would appreciate hearing back from you or a staff member about the status of these matters.

Respectfully,

Thomas F. Coleman
Legal Director

cc via email: Justice Harry Hull (Harry.Hull@jud.ca.gov)
Judge John Sugiyama (jsugi@contracosta.courts.ca.gov)



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November 12, 2018

Hon. Tani Cantil-Sakayue
Chief Justice of California
Chairperson of Judicial Council
350 McAllister Street
San Francisco, CA 94102

Re: Administrative Steps to Improve California's Probate Conservatorship System

Dear Chief Justice / Madam Chairperson:

I am writing to you on behalf of the tens of thousands of Californians who are living under orders of probate conservatorship, as well as the 5,000 or more who, as recipients of court-issued citations, become unwilling participants in such conservatorship proceedings each year.

For the past several years, I have devoted my professional life to advocating for the rights of adults with cognitive disabilities and, in particular, for comprehensive reform of California's probate conservatorship system. Unfortunately, my efforts have been met with indifference from most of the elected officials approached – including those within the state judiciary.

In contrast, many nations abroad have decided to change the way in which the government interacts with this class of vulnerable adults. This shift is due in large part to the provisions of the United Nation's Convention on the Rights of Persons with Disabilities (CRPD) – a treaty ratified by most nations throughout the world. Section 12 of the Convention requires a complete revamping of adult guardianship systems – eschewing the antiquated model of substituted decision-making for a new paradigm of supported decision-making.

I have recently returned from Seoul, Korea where I participated in the Fifth Annual World Congress on Adult Guardianship. I was invited to speak to 400 delegates from dozens of nations on more than five continents. It was very unpleasant for me to inform the assembly of delegates from across the globe how the rights of elders and other vulnerable adults in California are disregarded by our conservatorship system. It saddened me to report that many county courts do not even appoint an attorney to represent proposed conservatees, thus requiring people with serious cognitive and communication disabilities to represent themselves in these complex proceedings.

During the conference, I was privileged to hear from and exchange views with judges, government administrators, professors, and advocates about the progress each of their countries is making in modernizing their guardianship systems. Significantly, some countries have completely replaced the guardianship system with a more sophisticated assisted decision-making model.

As I listened to presentations at the conference, I began to realize the world is passing us by. Despite having a rich history of innovation and leadership, California is still operating a conservatorship system that does not reflect the principles of the CRPD, much less conform to and incorporate the access-to-justice requirements of the Americans with Disabilities Act (ADA).

My experiences at the World Congress have given me new hope for the possibility of progress in California. In that spirit, I urge you as Chief Justice of the Supreme Court and as Chairperson of the Judicial Council to initiate several actions to improve the probate conservatorship system in this state. Such actions will help bring California into compliance with the requirements of Title II of the ADA and, ultimately, closer to being in conformity with the principles enshrined in the CRPD.

I encourage you, as *Chief Justice of the Supreme Court*, to: (1) convene a task force on alternatives to conservatorship; (2) request the State Bar to adopt performance standards for attorneys who represent proposed conservatees; and (3) ask the Supreme Court to modify the Code of Judicial Ethics as requested in the recent report of Spectrum Institute (which has been referred to the Supreme Court's Advisory Committee on the Code of Judicial Ethics).

I also encourage you, as *Chairperson of the Judicial Council*, to ask that body to: (1) modify Rule 1.100 of the California Rules of Court to clarify the *sua sponte* duties of judges under the ADA to modify court policies and practices to accommodate the special needs of persons with *known* disabilities even absent a specific request; and (2) conduct a survey of the policies and practices of probate judges throughout the state to generate a centralized administrative awareness of the manner in which probate conservatorship cases are being processed in all 58 counties.

Further details regarding the above requests are contained in the enclosure: *Administrative Steps To Improve California's Probate Conservatorship System*. Implementing these actions will demonstrate a commitment by the Judicial Branch to ensure access to justice for people with disabilities and will show that California embraces the human rights principles adopted by the international community.

Finally, Spectrum Institute offers its assistance to the Supreme Court, Judicial Council, State Bar, and any of their advisory committees in whatever actions may be taken to reform and improve the state's probate conservatorship systems.

The next World Congress will be held two years from now in Argentina. I hope that when I attend, I will be able to report the progress that California has made in the interim.

Respectfully,



Thomas F. Coleman
Legal Director

Enclosure: *Administrative Steps to Improve California's Probate Conservatorship System* • www.spectruminstitute.org/steps

cc: Hon. Harry E. Hull; Hon. John H. Sugiyama; Hon. Richard D. Fybel; Ms. Leah T. Wilson



Disability and Guardianship Project Disability and Abuse Project

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(818) 230-5156 • www.spectruminstitute.org

August 16, 2018

Hon. Tani Cantil-Sakauye
Chair, California Judicial Council
455 Golden Gate Avenue
San Francisco, CA 94102

Re: Request for Statewide Inquiry into Local Practices on Appointment of Counsel

Dear Chief Justice:

It has come to our attention that several courts in California have policies and practices that are violating state and federal laws prohibiting disability discrimination by public entities.

The recent decision of the Supreme Court in *Jameson v. Desta* makes it clear that the judicial branch is theoretically committed to access to justice for disadvantaged litigants. The denial of access to justice for people with cognitive and communication disabilities should therefore be of concern.

The problem we have identified seems to stem from a lack of judicial awareness and from local court practices that are inconsistent with the accessibility principles inherent in the California Rules of Court. Therefore, I am writing to you as Chairperson of the Judicial Council of California – the body that promulgates court rules and that conducts research into local judicial policies and practices.

Spectrum Institute and other organizations have just filed two administrative complaints with the Sacramento County Superior Court. We have also filed pre-complaint inquiries with the Department of Fair Employment and Housing. We are hoping that the court in Sacramento will modify its policies and practices so they conform to state and federal civil rights laws. Such action could become a model for other courts throughout the state that may also be denying access to justice to litigants with cognitive disabilities who are involved in conservatorship proceedings.

The Judicial Council has constitutional authority to conduct surveys of courts throughout the state to determine and evaluate local policies and practices. We urge the Council to survey probate courts in every county to determine the extent to which they may be failing to appoint counsel to represent probate conservatorship respondents. Requiring involuntary litigants with cognitive and communication disabilities to represent themselves precludes access to justice in these cases.

Yours truly,

Thomas F. Coleman
Legal Director

More information at:

<http://www.spectruminstitute.org/Sacramento/>



Disability and Guardianship Project
Disability and Abuse Project

9420 Reseda Blvd. #240, Northridge, CA 91324
(818) 230-5156 • www.spectruminstitute.org

May 1, 2017

Honorable Tani Cantil-Sakauye
Chairperson
Judicial Council of California
350 McAllister Street
San Francisco, CA 94102

SECOND REQUEST
sent on May 30, 2017
No response received
to first request as of
May 28, 2017

Re: Request for Information

Dear Chief Justice:

I am writing to obtain contact information for the employee designated by the Judicial Council to receive and investigate complaints of noncompliance by the Judicial Council with its obligations under Title II of the Americans with Disabilities Act.

I would also like to know where I can obtain, or find online, the grievance procedures that may be used by persons wishing to complain to the Judicial Council that its policies or practices do not comply with the requirements of Title II.

I reached out to Ms. Linda McCulloh for this information last week but did not receive a response. Therefore, I am hoping that you, as Chairperson of the Judicial Council, can provide this information.

Respectfully submitted:

Thomas F. Coleman
Legal Director, Spectrum Institute
tomcoleman@spectruminstitute.org



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November 30, 2015

Honorable Tani Cantile-Sakauye
Chief Justice, California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Re: Request for Modification (Section 504) and Accommodation (ADA)

Dear Chief Justice:

I am not writing to you in your capacity as Chairperson of the Judicial Council of California. Also, I am not writing to you in connection with any specific case. Rather, I am writing to you as the presiding judge of the court that oversees the State Bar of California. This letter is sent to you, as representative of the Supreme Court, in an administrative capacity.

This is a follow up to my letter to the Supreme Court on October 26, 2015. In that letter I brought to the court's attention systemic problems of ineffective assistance of counsel stemming from a lack of training and performance standards for court-appointed attorneys who represent involuntary litigants with intellectual and developmental disabilities in limited conservatorship proceedings.

Due to their cognitive and communication disabilities, these individuals are not able to file complaints against their attorneys with the State Bar of California. Likewise, they are not able to file appeals to challenge ineffective assistance of counsel. Furthermore, as a class they are not able to petition the government for redress of grievances.

Because their disabilities preclude them from seeking relief through normal legal and political procedures or venues, the Supreme Court should – on its own motion – initiate modifications and accommodations through the State Bar or otherwise to inquire into the myriad problems that have been thoroughly documented by Spectrum Institute. As the government entity overseeing the State Bar and its Rules of Professional Conduct, MCLE credit process, and complaint procedures, the Supreme Court has an obligation to ensure that modifications and accommodations are adopted to give this class of litigants access justice so their complaints, as a class, are addressed by the State Bar and by the Supreme Court as its oversight agency. Perhaps a Task Force on Access to Justice would be the first step to verify the validity of these complaints and initiate a remedial process.

Respectfully submitted:

Thomas F. Coleman
Legal Director, Spectrum Institute

cc: Ms. Elizabeth Rindskopf Parker
Executive Director, State Bar of California

Enclosure: Essay on California Supreme Court as a venue of last resort.



U.S. DEPARTMENT OF JUSTICE

United States Attorney
Eastern District of California

Benjamin B. Wagner
United States Attorney

RECEIVED

MAY 18 2015

CHAMBERS OF THE
CHIEF JUSTICE

2500 Tulare Street, Suite 4401
Fresno, CA 93721

Phone 559/497-4000
Fax 559/497-4099
TTD 559/497-4500

May 15, 2015

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Honorable Alex Padilla
California Secretary of State
1500 11th Street
Sacramento, California 95814

The Honorable Tani Cantil-Sakauye
Chief Justice
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: *Investigation of California's Voting Practices and Procedures in Superior Court
Conservatorship Proceedings for Persons with Disabilities, DJ # 204-11E-398*

Dear Secretary Padilla and Chief Justice Cantil-Sakauye:

In response to a complaint filed regarding California's voting practices and procedures that are impacted by conservatorship proceedings for persons with disabilities, the U.S. Department of Justice has opened an investigation to determine whether violations of title II of the Americans with Disabilities Act of 1990 (ADA), as amended 42 U.S.C. §§ 12131-12134, and the Department's implementing regulation, 28 C.F.R. Part 35, have occurred. Title II of the ADA prohibits discrimination against individuals with disabilities by public entities. The text of the ADA, the Department's regulation, and many technical assistance publications can also be accessed on our ADA Home Page at www.ada.gov. [<http://www.ada.gov>](http://www.ada.gov).

The complaint alleges that the State of California unlawfully deprives persons with disabilities of their right to vote when they are adjudged to be limited conservatees. In particular, the complaint alleges that the Los Angeles Superior Court has deprived persons with disabilities of their right to vote by finding such persons are not capable of completing an affidavit of voter registration, without applying objective standards or fully investigating voter competency issues. The complaint further alleges that the Superior Court has restricted the inquiry regarding a person's capability to complete the affidavit to be without assistance, contrary to the ADA and other federal laws protecting the right to vote.¹ The

¹ The complaint included allegations that the State's actions violated other federal laws including Section 504 of the Rehabilitation Act. The Department reserves the right to expand the scope of this investigation to include other applicable federal laws, as appropriate.

complaint alleges that once a superior court determines that a person is not capable of completing the affidavit of voter registration, the person is then removed from the voting rolls or prohibited from registering to vote by the county clerk's office and that further reviews of the determination are not conducted.

The Department of Justice is authorized to investigate alleged violations of title II of the ADA, 28 C.F.R. §§ 35.172, and, if voluntary compliance is not achieved, to take appropriate action, including filing an enforcement action in U.S. district court for injunctive relief and monetary damages. 28 C.F.R. §§ 35.172, 35.174. Although the allegations filed with the Department concerned the Los Angeles Superior Court, we find the allegations to be of concern throughout the State of California as they involve the State's election code and state-wide policies, practices, and procedures.

To evaluate this complaint, we seek your cooperation in providing the following preliminary information:

1. The name, address, and telephone number of the individual to whom this office should direct any future questions and correspondence. Please indicate if this person has authority to negotiate a settlement of this matter. If the State will be represented by an attorney in this matter, please provide the attorney's name, address, and telephone number;
2. Your response to the allegations of the complaint and any additional information you consider relevant to resolution of the complaint;
3. A description of the process for disqualifying a person subject to limited conservatorship from registering to vote or voting;
4. A description of any State of California policy, practice, or procedure regarding the right to vote of persons subject to limited conservatorship proceedings, including but not limited to, the State's election code and any superior court policies, practices, or procedures, and, where such policies, practices, or procedures are written, a copy thereof;
5. A description of the State's rationale for disqualifying persons with disabilities subject to limited conservatorships from registering to vote or voting;
6. To the extent the State disqualifies persons with disabilities subject to limited conservatorships from registering to vote or voting based on the inability of such persons to complete an affidavit of voter registration, a description of the State's rationale for such practice.
7. A description of any standards, criteria, or evidentiary basis used by the California Superior Court in making a determination that a person is not able to complete the affidavit of voter registration;
8. A description of any re-evaluation process of the voter competency determination conducted by the Superior Courts or other government agencies, including the events that trigger a re-evaluation, who conducts the re-evaluation, and the standards used to re-evaluate the determination;
9. A description of the process for a person in a limited conservatorship to have his or her voting rights restored;

10. The number of persons in the State in the last three years that have been adjudged to be limited conservatees and that have been disqualified from voting or registering to vote, by county; and the number of persons who had their voting rights restored that were previously subject to disqualification in a limited conservatorship proceeding, by county;

11. A description of any training and a copy of any training material (including sample conservatorship documents) provided to judges, attorneys, investigators, or other persons involved in conservatorship proceedings (including the person moving for the conservatorship) regarding the voter competency provisions in conservatorship proceedings;

12. A description of any notice or information and a copy of any notice or information provided to persons subject to the conservatorship proceedings regarding the voter competency provisions in conservatorship proceedings; and

13. Please identify whether the Secretary of State's Office or the California Superior Court receive any federal funding, and, if so, the name of the federal agency that provides the funding and the name(s) of all programs that receive that funding or to which any of that funding is distributed.

Please provide these documents and information no later than thirty (30) days from the date of this letter. Please send a copy of the requested information and documents by overnight delivery to: Vincente Tennerelli, United States Attorney's Office, 2500 Tulare Street, Suite 4401, Fresno, CA 93721. Alternatively, you may email the documents and information to: Vincente.Tennerelli@usdoj.gov and elizabeth.johnson@usdoj.gov.

Be advised that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has filed a complaint with the Department of Justice, or has otherwise either taken action or participated in an action to secure rights protected by the ADA. Such behavior would constitute an additional ADA violation.

We strongly recommend that you consult with this office before making any operational changes to address these allegations. Any such changes must comply with all applicable statutes. Any modifications you undertake which are not in compliance with those requirements may need to be made before this complaint can be resolved.

If you have questions or concerns, please contact Vincente Tennerelli at 559-497-4080 or Elizabeth Johnson at 202-307-3543.

Sincerely,

BENJAMIN B. WAGNER
United States Attorney

by Vincente Tennerelli
Vincente A. Tennerelli
Assistant United States Attorney

Elizabeth Johnson
United States Department of Justice
Disability Rights Section,
Civil Rights Division



2100 Sawtelle, Suite 204, Los Angeles, CA 90025 • (818) 230-5156
www.disabilityandabuse.org • tomcoleman@disabilityandabuse.org

January 29, 2015

Hon. Tani G. Cantil-Sakauye
Chairperson, Judicial Council
350 McAllister Street
San Francisco, CA 94102

Dear Chief Justice:

The enclosed brochure is being sent to you in your capacity as Chairperson of the Judicial Council.

Gregory's case is an example of the many dysfunctional aspects of the Limited Conservatorship System. The violation of Gregory's First Amendment rights could not be appealed. Why? Because his court-appointed attorney had a conflict of interest due to a local court rule that required her to have dual roles – to help the court resolve the case and to advocate for the client. An attorney is ethically prohibited from having two roles, but that is what the court rules require.

The attorney did what nearly all court-appointed attorneys in Los Angeles do. She surrendered the rights of her client. There are almost never any contested hearings in limited conservatorship cases, and on the rare occasions when they occur, there are NO appeals by the limited conservatee. Once the attorneys surrender the rights of their clients, and an order is entered granting the conservatorship and transferring decision-making powers from the client to a conservator, that's it. The attorney is relieved as counsel. The attorney has no obligation to explain to the client about a right to appeal, and I have confirmed with the former presiding judge of probate that they do not notify the clients of appeal rights.

In Gregory's case, his mother appealed to challenge the order that forced him, an adult, to visit with his father against his will. The Court of Appeal did not reach the merits of the case, instead dismissing the appeal on the ground that the mother lacked standing. So Gregory is trapped into social servitude. He can't appeal because his attorney won't, and his mother can't appeal either.

I have researched scores of court records in Los Angeles, where 1,200 limited conservatorships are granted each year. First Amendment rights – the right to decide who to associate with and who not to associate with – are taken away from the vast majority of conservatees.

The Judicial Council should convene a Workgroup on Limited Conservatorships. It should be open and transparent and it should include a few members who are not part of the judicial branch. I have written to Justice Hull about this but have not yet heard back. Perhaps I will soon.

Very truly yours,

A handwritten signature in blue ink that reads "Thomas F. Coleman". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

THOMAS F. COLEMAN
Legal Director



2100 Sawtelle, Suite 204, Los Angeles, CA 90025 • (818) 230-5156
www.disabilityandabuse.org • tomcoleman@disabilityandabuse.org

December 29, 2014

Hon. Tani G. Cantil-Sakauye
Chief Justice of California
350 McAllister Street
San Francisco, CA 94102

Re: Task Force on Limited Conservatorships

Dear Chief Justice:

I have written to you several times during the past year. On each occasion I have provided information or documents in support of our request that the Judicial Council convene a statewide Task Force on Limited Conservatorships to address the deficiencies in the Limited Conservatorship System.

Today I am sending you information about the work of a Task Force in Indiana and several reforms to the Adult Guardianship System in that state which were prompted by that Task Force. The Indiana Supreme Court embraced some of the proposed reforms and included line items in the budget of the Judicial Branch to enable the reforms to be implemented.

The enclosed essay explains what has occurred in Indiana. The essay ends with a call for reforms in California and for you, as Chair of the Judicial Council, to convene a statewide Task Force here.

I would be pleased to meet with you and other members of the Judicial Council to discuss ways in which we can move forward to address the serious deficiencies in the Limited Conservatorship System in California. Please let me know when such a meeting can be arranged.

cc: Judicial Council

Very truly yours,

A handwritten signature in blue ink that reads "Thomas F. Coleman".

THOMAS F. COLEMAN
Legal Director



2100 Sawtelle, Suite 204, Los Angeles, CA 90025 • (818) 230-5156
www.disabilityandabuse.org • tomcoleman@disabilityandabuse.org

November 24, 2014

Hon. Tani G. Cantil-Sakauye
Chief Justice of California
350 McAllister Street
San Francisco, CA 94102

Re: Task Force on Limited Conservatorships

Dear Chief Justice:

Since I wrote to you last week with a renewed request for a Judicial Council Task Force on Limited Conservatorship, a new report has come to my attention that I want to share with you.

The Coalition for Compassionate Concern of California recently issued a report, *Thinking Ahead Matters*, which cites our report, *Justice Denied*, and adds new research to it, along with a call for a thorough review of the Limited Conservatorship System statewide and recommendations for major reforms in that system.

The Coalition includes a network of healthcare organizations, such as the Alliance of Catholic Healthcare, Cedar-Sinai Medical Center, and California State University Institute for Palliative Care, to name a few. The study was done with the help of an Advisory Committee, including representatives of The Arc of California, Disability Rights California, the State Council on Developmental Disabilities, and the Department of Developmental Disabilities

Enclosed you will find a media release sent today to the Daily Journal and other press, as well as several pages of relevant excerpts from *Thinking Ahead Matters*.

As the press release states, "The call for reform of the Limited Conservatorship System just got louder" and we trust that you will respond to our request for a statewide Task Force in a positive manner.

cc: Hon. John Sugiyama
Hon. Harry Hull

Very truly yours,

A handwritten signature in blue ink that reads "Thomas F. Coleman".

THOMAS F. COLEMAN
Legal Director



2100 Sawtelle, Suite 204, Los Angeles, CA 90025 • (818) 230-5156
www.disabilityandabuse.org • tomcoleman@disabilityandabuse.org

November 17, 2014

Hon. Tani G. Cantil-Sakauye
Chief Justice of California
350 McAllister Street
San Francisco, CA 94102

Re: Task Force on Limited Conservatorships

Dear Chief Justice:

Many months ago I wrote to you with a request for the Judicial Council to convene a statewide Task Force to review systemic and operational deficiencies in the Limited Conservatorship System and to make recommendations for improvement to that system. You referred our request to Justice Harry Hull, Chair of the Rules and Projects Committee. He referred it to the Probate and Mental Health Advisory Committee.

Our proposal came before the Advisory Committee at a public meeting on November 14. At that meeting, and in the many months preceding it, no one has disputed the validity of our complaints, the accuracy of our factual assertions, or the need for such a Task Force. The concern that was raised at the committee meeting last Friday was that of funding and staffing.

We believe that the Judicial Council can obtain all or a large portion of the funding needed to operate the Task Force from several sources, including: the State Bar Foundation, Cal OES, the federal Administration on Developmental Disability, and the federal Office for Victims of Crime. We are willing to discuss funding ideas with the Judicial Council. As I said at the committee meeting, "Where there's a will, there's a way."

The Judicial Council has had the will to create task forces in other important areas, including: a Family Law Task Force, a Children in Foster Care Task Force, a Domestic Violence Task Force, a Probate Task Force (for seniors in general conservatorships), a Language Access Task Force, and a Task Force on Self Represented Litigants. The dysfunction of the Limited Conservatorship System rises to the same level of importance and need.

Just as the family law system was found to provide substandard justice as compared to civil law, the same can be said about limited conservatorship proceedings. Just as children in foster care are a vulnerable class in need of special attention, adults with developmental disabilities also have special needs in terms of the administration of justice. Just as language access barriers prevent many people from receiving equal justice, the same is true for disability access barriers – obstacles to communication and understanding. The overwhelming majority of petitioners in limited conservatorships represent themselves, and this aspect of the system needs attention. When problems with general conservatorship proceedings were exposed by the media, seniors got immediate attention with the formation of the Probate Task Force.

Chairperson
Judicial Council
November 17, 2014

Pag 2

As Dr. Nora Baladerian told the committee at the meeting last week, the question is not whether a Limited Conservatorship Task Force should be convened, but how soon it can be done. Each day of delay is another day that large numbers of people with developmental disabilities are being denied justice.

Progress can be made while the Judicial Council seeks funding for the Task Force. The Rules and Projects Committee can create a Limited Conservatorship Survey Workgroup which can do some preliminary research into all working components of the Limited Conservatorship System in each county.

A workgroup of three people would be sufficient, along with a staff person to assist in the distribution of the surveys and receipt of the responses. I would be willing to serve as a member of the workgroup. Perhaps Judge John Sugiyama would be willing to work with me, with Mr. Douglas Miller as the staff member. Just one other person would be needed and the surveys of the three-member workgroup could begin. The surveys would ask the Presiding Judge of the Probate Court in each county to have his or her staff gather some information, answer some questions, and assemble some documents. That information would then be sent to the office of the workgroup staff person where it would be available for analysis. Using such a workgroup process would allow the Task Force to have a running start when it is eventually created.

A workgroup of this nature is certainly within judicial purview. The California Constitution gives the Judicial Council authority to survey judicial business. Processing limited conservatorship cases, and the activities of all of the participants in such cases, are clearly judicial business.

The many essays and reports I have written in recent months document the urgent need for review of the Limited Conservatorship System. This system has operated for more than 30 years without being reviewed. It has no checks and balances built into it. The time for a comprehensive review is long overdue. That review can begin with a small workgroup conducting surveys. I am sure there are people, myself included, who would be eager to review the survey responses and documents submitted by the probate courts in each county. The surveys and preliminary analysis would serve as the foundation for a broader review of the system by the Task Force.

I am willing to meet in person with you, Justice Hull, and/or Judge Sugiyama to discuss these ideas further and to move forward with a measured plan to implement them in phases.

I look forward to your reply and to meeting with you or the appropriate members of the Judicial Council in the very near future.

cc: Hon. John Sugiyama
Hon. Harry Hull

Very truly yours,



THOMAS F. COLEMAN
Legal Director



2100 Sawtelle, Suite 204, Los Angeles, CA 90025 • (818) 230-5156
www.disabilityandabuse.org • nora-baladerian@verizon.net

September 22, 2014

Hon. Tani G. Cantil-Sakauye
Chief Justice of California
350 McAllister Street
San Francisco, CA 94102

Re: Follow up to prior letters

Dear Chief Justice:

I am writing to you in your capacity as Chair of the Judicial Council.

On May 15, 2014, I sent you a report, *Justice Denied*, and made a request that the Judicial Council convene a Task Force on Limited Conservatorships to review the Limited Conservatorship System statewide, with a special focus on Los Angeles County where several major deficiencies have been identified.

You referred the request to Justice Harry Hull, Chair of the Rules Committee. In turn, he referred it to the Probate and Mental Health Advisory Committee. In turn, that Committee referred it to a subcommittee for study, with directions to report back to the Committee in November. Our report and recommendation are now buried deep in the judicial bureaucracy. The way in which this is being handled is in stark contrast to the "fast track" action that was taken by the Judicial Council when major flaws in the General Conservatorship System were exposed in 2006.

Since I wrote you on May 15, things are getting worse, not better, with regards to the processing of limited conservatorship cases in Los Angeles. A voting rights complaint has been filed with the United States Department of Justice and that investigation is pending. We recently released a report on the deficiencies in the performance of court-appointed (PVP) attorneys in Los Angeles, with recommendations on how that can and should be improved. (See *Strategic Guide* which is enclosed.)

On September 13, 2014, Dr. Nora J. Baladerian and I attended a Mandatory Training for PVP Attorneys, conducted by the Probate Court with the assistance of the local Bar Association. The seminar was a complete failure in that topics advertised to be covered were not, speakers selected did not have the necessary credentials and experience to impart the information the attorneys needed, and too much misinformation and contradictory information was given to those who attended the training. I am enclosed my review of that training. It makes very specific criticisms, describes what a proper seminar would have included, and contains a wealth of citations and resources that could help PVP attorneys provide effective representation of counsel to clients with developmental disabilities (if they ever receive the review).

We are disappointed that things are not improving here in Los Angeles and that members of this vulnerable class of people continue to be denied equal justice in a system that is routinely violating their statutory and constitutional rights. We implore you to speed up the process of answering our request for a Task Force.

cc: Hon. David S. Wesley
Justice Harry E. Hull

Very truly yours,

A handwritten signature in blue ink that reads "Thomas F. Coleman".

THOMAS F. COLEMAN
Legal Director
(818) 482-4485 / tomcoleman@earthlink.net



2100 Sawtelle, Suite 204, Los Angeles, CA 90025 • (818) 230-5156
www.disabilityandabuse.org • nora-baladerian@verizon.net

June 23, 2014

Hon. Tani G. Cantil-Sakauye
Chief Justice of California
350 McAllister Street
San Francisco, CA 94102

Re: Information on supported decision making and
analysis of calls to repeal limited conservatorship laws

Dear Chief Justice:

I am writing to you in your capacity as Chair of the Judicial Council. This is a follow up to my previous letters to you dated May 15, 2014 and June 15, 2014, regarding limited conservatorships in California.

There are some organizations in California that are calling for the repeal of limited conservatorship laws. They want the Limited Conservatorship System to be "privatized" so to speak. They are promoting something called "supported decision making."

Our Project believes there should be a proper balance between rights and responsibilities, protections and liberties, with only that amount of protection in any given case necessary to minimize the risk of abuse. We favor reform of the Limited Conservatorship System, not a wholesale repeal of it.

Since vague political calls for supported decision making as a substitute for conservatorships are starting to gain traction, we decided to look deeper into the matter. Our research reinforces our views that the Limited Conservatorship System should be reformed, not repealed. In fact, many of the principles involved in supported decision making are already a part of the limited conservatorship process.

I am enclosed three essays that I have recently written on these subjects. I am sending a copy of them to Justice Harry Hull, believing that he may want to share them with the Probate and Mental Health Advisory Committee since they are relevant to that committee's evaluation of our request for the creation of a statewide Task Force on Limited Conservatorships.

cc: Justice Harry Hull
Encl: Three Essays

Very truly yours,

A handwritten signature in blue ink that reads "Thomas F. Coleman". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

THOMAS F. COLEMAN
Legal Director
(818) 482-4485 / tomcoleman@earthlink.net



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www.disabilityandabuse.org • nora-baladerian@verizon.net

June 15, 2014

Hon. Tani G. Cantil-Sakauye
Chief Justice of California
350 McAllister Street
San Francisco, CA 94102

Re: Voting Rights Conference

Dear Chief Justice:

I am writing to you in your capacity as Chair of the Judicial Council. This is a follow up to my previous letter to you dated May 15, 2014 regarding limited conservatorships in California.

Thank you for referring my letter, and the report, *Justice Denied*, to Justice Harry Hull, Chair of the Rules and Project Committee of the Judicial Council.

Today I am sending you a report, *Voting Rights*, that was prepared in connection with a conference we are hosting on June 20. Conference participants will discuss how to address violations of voting rights of limited conservatees – how to stop such violations in the future and how to remedy past violations.

We wanted you to be aware of what we are doing to improve the situation for limited conservatees who are under the protection of the Probate Courts of this state. We have suggestions as to steps the Judicial Council can take to make it more likely that judges and court-appointed attorneys protect the voting rights of current limited conservatees as well as those who are brought into this system in the future.

If the Judicial Council eventually accepts our recommendation for a statewide Task Force on Limited Conservatorships, the voting rights issues can be folded into that investigation. However, if a broad Task Force is not convened, then we suggest that the Judicial Council should find a different way to address the voting rights issues.

Whatever ways the Judicial Council decides to move forward regarding our complaints about the Limited Conservatorship System in California, we remain ready to cooperate with those efforts.

cc: Justice Harry Hull
Encl: Two reports

Very truly yours,

A handwritten signature in blue ink that reads "Thomas F. Coleman". The signature is written in a cursive, flowing style.

THOMAS F. COLEMAN
Legal Director
(818) 482-4485 / tomcoleman@earthlink.net



2100 Sawtelle, Suite 204, Los Angeles, CA 90025 • (818) 230-5156
www.disabilityandabuse.org • nora-baladerian@verizon.net

May 15, 2014

Hon. Tani G. Cantil-Sakauye
Chief Justice of California
350 McAllister Street
San Francisco, CA 94102

Re: Request for Judicial Council to Convene a Task Force on Limited Conservatorships

Dear Chief Justice:

I am writing to you in your capacity as Chair of the Judicial Council.

In January 2006 Chief Justice Ronald M. George convened a Probate Conservatorship Task Force and directed it to conduct a comprehensive review of the probate conservatorship system in California. The actions of the Chief Justice were prompted, in large measure, by a series of articles published by the Los Angeles Times that called public attention to major problems with the general conservatorship system.

The stories published by the Los Angeles Times also caught the attention of the California Legislature. Hearings were conducted and new legislation was enacted.

The actions of the legislative and judicial branches focused almost entirely on general conservatorships. No particular attention was given to limited conservatorships for people with developmental disabilities.

The time has come for a comprehensive review of the limited conservatorship system. Our Project has done its own "mini-audit" of this system as it is operated by the Los Angeles Superior Court. Our preliminary findings have caused us to convene a conference on May 9, 2014, and another is scheduled for June 20. A copy of our preliminary report, *Justice Denied*, is enclosed. A copy is being sent to all members of the Judicial Council. We are also reaching out to the Legislature and to other statewide elected officials.

We do not know how limited conservatorships are processed in other counties, but if what is happening in the largest Superior Court in the state is any indication, there is a major statewide deprivation of justice that is happening to a very vulnerable population – one that is unable to adequately advocate for itself. If Los Angeles County is unique, then thousands of people with disabilities in that jurisdiction are being deprived of equal protection of the law (in addition to violations of other constitutional and civil rights).

Our Project is calling on you to convene a Task Force on Limited Conservatorships to review the limited conservatorship system statewide, with a special focus on Los Angeles County. Members of the Task Force should include a wide range of perspectives, from inside and outside of the legal profession. My colleagues and I at the Disability and Abuse Project are willing to be of assistance. We have considerable experience in working with study commissions and task forces on matters involving policy and law reform.

What we do to solve these problems will affect tens of thousands of existing limited conservatees in California and thousands more whose cases are processed each year. Therefore, we should act with all deliberate speed. I look forward to your reply.

cc: Judicial Council members

Very truly yours,

A handwritten signature in blue ink that reads "Thomas F. Coleman".

THOMAS F. COLEMAN
Legal Director
(818) 482-4485 / tomcoleman@earthlink.net